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OF THE

STATE OF MONTANA

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THE REVISED CODES OF 1907

AND

SESSION LAWS OF 1909

Compiled at the Office of the Inspector of Mines

MINING DEPARTMENT

WM. WALSH, Mine Inspector

WM. OREM, Deputy Inspector

COAL MINING DEPARTMENT

JOSEPH B. McDERMOTT, Coal Mine Inspector

Independent Publishing Company
1910



COMPLIMENTS OF
JOSEPH B. McDERMOTT,
State Coal Mine Inspector,
Helena, Montana.

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TABLE OF CONTENTS.

(See, also, Index at end of Pamphlet.)

- Division I. Laws Relating to Metalliferous Mining.
- Division II. Laws Relating to Coal Mining.
- Division III. Laws Applicable to Both Quartz and Coal Mining.
- Division IV. Miscellaneous Provisions.

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DIVISION I.

LAWS RELATING TO METALLIFEROUS MINES.

Chapter I.

Inspector of Mines.

(Revised Codes, Part III, Title VII, Chapter II.)

Article III.

- Section 1711. Inspector of Mines—Appointment—Salary.
1712. Deputy Inspector—Appointment—Qualifications—Salary.
1713. Duties of Inspector—Annual Inspection.
1714. Complaints—Duties of Inspector.
1715. Complaints—Notice to Owner.
1716. Annual Inspection.
1717. Investigation After Accidents.
1718. Bond.
1719. Annual Report.
1720. To What Mines Act Applicable.
1721. Penalties.

Section 1711. Inspector of Mines—Appointment—Salary.

The Governor, by and with the advice and consent of the Senate, must appoint an Inspector of Mines, who shall be at least thirty years of age, a resident of Montana at least one year, who shall be theoretically and practically acquainted with mines and mining in all its branches, and he shall hold his office for four years unless sooner removed by the Governor. No person shall hold the position of Inspector of Mines while an employee or officer of any mining company or corporation. The Inspector of Mines must devote his entire time to the duties of his office, and his salary is two thousand five hundred dollars per annum. (Laws of 1909, Chapter 71, p. 94.)

Section 1712. Deputy Inspector—Appointment—Qualifications—Salary. The Governor by and with the consent of the Senate must appoint a Deputy Inspector of Mines who shall possess like qualifications to those required of the Inspector of Mines, who shall hold his office for four years unless sooner removed by the Governor. No person shall hold the office of Deputy Inspector of Mines while an employee or officer of any mining company or corporation. The Deputy Inspector

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of Mines must devote his entire time to the duties of his office under supervision and direction of the Inspector of Mines, and his annuay salary is one thousand eight hundred dollars per annum. (Laws of 1909, Chapter 71, p. 94).

Section 1713. Duties of Mine Inspector—Annual Inspection.

It is the duty of the Inspector of Mines by himself or deputy to visit every mine in the State, once every year and inspect its workings, timbering, ventilation, means of ingress and egress, and the means adopted and in use for the preservation of the lives and safety of the miners employed therein. For this purpose the inspector and his deputy at all times shall have access to any mine and all parts thereof. All mine owners, lessees, operators or superintendents must render such assistance as may be necessary to enable the inspector or his deputy to make the examination. When upon such inspection any mine or portion thereof is found to be in an unsafe condition, the inspector shall at once serve a notice in writing upon the owner, lessor, lessee, agent, manager or superintendent thereof setting forth the nature of the defects which render such mine unsafe and the point or place in such mine where such defects exist, and requiring the repairs necessary to remedy such defects to be made within a specified time, and, if in his judgment the circumstances so require, he shall forbid the operation of such mine or portion thereof as has been declared unsafe, save and except for the purpose of making the repairs necessary for the purpose of remedying such defects and making such mine safe for the laborers employed therein. (Laws of 1903, Sec. 1, Chapter 98.)

Section 1714. Duty to Inspect Mines Upon Complaint.

Whenever the Inspector of Mines receives a complaint in writing signed by one or more parties setting forth that the mine in which he or they are working is dangerous in any respect, he or the deputy inspector must in person visit and examine such mine. Every complaint must set forth the nature of the danger existing at the mine and the time the cause of such danger was first observed. (Laws of 1903, Sec. 2, Chapter 98.)

Section 1715. Notice to Owner of Defects. After such complaint has been received by the Inspector of Mines, he must, as soon as possible, visit such mine; and if from such examination he ascertains that the mine is from any cause

in a dangerous condition, he must at once notify the owner, lessor, or agent thereof, such notice to be in writing, and to be served by copy on such owner, lessor, lessee or agent, in the same manner as provided by law for the serving of legal process, and the notice must state fully and in detail in what particular manner such mine is dangerous or insecure, and require all necessary changes to be made without delay, for the purpose of making such mine safe for the laborers employed therein; and in any criminal or civil procedure at law against the party or parties so notified, on account of loss of life or bodily injury sustained by an employee subsequent to such notice and in consequence of a neglect to obey the inspector's requirements, a certified copy of the notice served by the inspector is prima facie evidence of the gross negligence of the party or parties so complained of. If the owner, lessor, lessee or agent of any such mine shall neglect or refuse to obey or comply with the instructions of this inspector as contained in such notice, or shall neglect or refuse to cause the repairs necessary to remedy such defect to be made within a reasonable time, or shall refuse to cause work to be stopped when so ordered, such party or parties so refusing may be prosecuted criminally by the inspector. (Laws of 1903, Sec. 3, Chapter 98.)

Section 1716. Annual Inspection—Report. It is the duty of the Inspector of Mines, at least once in each year, either in person or by deputy inspector, to visit each mining county in the State, and examine as many of the mines in the different counties as practicable, and make such recommendations as in his judgment are necessary to insure the safety of the workmen employed therein, and whenever from his examination, he finds any mine to be in an unsafe condition, he shall at once serve a notice upon the owner, lessor, lessee, or agent thereof, and if such owner, lessor, lessee or agent fails to comply with such notice, he may prosecute them or any of them as provided in the next preceding section. (Laws of 1903, Sec. 4, Chapter 98.)

Section 1717. Investigation After Accidents. Whenever a serious or fatal accident occurs in any mine it is the duty of the person in charge thereof to immediately notify the Inspector of Mines or the deputy inspector, and upon receiving such

notice the inspector in person or the deputy inspector must at once repair to the place of accident, and investigate fully the cause of such accident, and whenever possible to do so, the inspector or deputy inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident, and testify as to the cause thereof, and state whether, in his opinion, the accident was due to the negligence or mismanagement of the owner or person in charge. If the inspector or deputy inspector can not be immediately present in case of a fatal or serious accident occurring, it is the duty of the owner or person in charge of the mine to have written statements made by those witnessing the same, and duly sworn to. In case no person was present at the time of the accident, then the verified statement of those first present after the accident must be taken, and such statement must be given to the inspector or the deputy inspector. If after making such investigation the inspector deems the facts warrant it, he may prosecute criminally the owner, lessor, lessee, or agent of the mine in which such accident occurred. (Laws of 1903, Sec. 5, Chapter 98.)

(Note: See opinion of Attorney General page 75.)

Section 1718. Bond of Inspector. The Inspector of Mines must execute an official bond in the sum of five thousand dollars, and the deputy inspector must execute an official bond in the sum of twenty-five hundred dollars.

Section 1719. Annual Report. The Inspector of Mines must make an annual report to the Governor on the first Monday of November, and in the report must state all the accidents that have occurred in the mines of the State which have occasioned serious injury or resulted fatally, together with the nature and cause of such accidents. Such report must also contain statistical and other information which may tend to promote the development of the mineral resources of the State, and must set forth the result of the inspector's labors.

Section 1720. To What Mines Act Applicable. The provisions of the Article do not apply to mines in which less than five men are employed. But all owners, lessors, lessees, agents or managers operating any metalliferous mine in this State in which five or more men are employed, shall report the same to the Inspector of Mines, state the name of the mine, the

location of the same, the name of the company, person or persons owning or operating the same, postoffice address and number of men employed. (Laws of 1903, Sec. 6, Chapter 98.)

Section 1721. **Penalties.** All violations of the provisions of this Article are provided for in the Penal Code, Section 8563.

Chapter 2.

Code of Signals in Mines.

Section 1724. **Code of Signals in Mines.**

1725. **Penalties.**

1726. **Fines Paid Into School Fund.**

Section 1724. **Code of Signals in Mines.** It is made the duty of the Inspector of Mines of Montana, and he is hereby required to prepare a complete code of signals for use in all mines in this State, worked through a shaft of 75 feet or more in depth, and employing ten or more men, and cause the same to be made known to each owner or operator of a mine in Montana by printed circular instructions to the end that a uniform code of mine signals may prevail. The said inspector of mines of Montana may add to or change such code of signals as circumstances may require, but no change of signals shall go into effect until a time specified by him, not less than sixty days nor more than ninety days from the time such change shall be ordered by him; provided, that the code of signals first prepared by him shall be used in all said shaft mines from and after June 1, 1895. (Act approved March 7, 1895.)

Section 1725. **Penalty for Violation of Act.** Any owner or operator of a mine who shall refuse or neglect to cause the signals provided for in Section 1724 of this Act to be used in his mine to the exclusion of all other signals, shall be deemed guilty of a misdemeanor and upon conviction of such refusal or neglect, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days or more than ninety days in the discretion of the court, for each and every offense. (Act approved March 7, 1895.)

Section 1726. **Fines Paid Into School Fund.** All fines which may be collected under the provisions of this Act shall be paid into and form a portion of the public school fund in the county in which conviction takes place. (Act approved March 7, 1895.)

STATE CODE OF MINE SIGNALS.

Signal Bells.

1 bell hoist, 1 bell stop, (if in motion.)

2 bells lower men, 3 bells hoist men.

4 bells blasting signal, engineer must answer by raising bucket a few feet and letting it back slowly.

Then 1 bell hoist men away from blast.

5 bells steam on, 6 bells steam off.

7 bells air on, 8 bells air off. 3-2-2 send down drills. 3-2-3 send down picks.

9 bells danger signal, (case of fire or other danger), then ring number of station where danger exists. No person shall ring any bell except the station tender, except in case of danger, or when the main shaft is being sunk. Engineers must slow up when passings stations when men are on the cage.

Station Bells.

Bells	Pause	Bells	No. Station	Bells	Pause	Bells	No. Station
2	"	1	1	5	"	1	16
2	"	2	2	5	"	2	17
2	"	3	3	5	"	3	18
2	"	4	4	5	"	4	19
2	"	5	5	5	"	5	20
3	"	1	6	6	"	1	21
3	"	2	7	6	"	2	22
3	"	3	8	6	"	3	23
3	"	4	9	6	"	4	24
3	"	5	10	6	"	5	25
4	"	1	11	7	"	1	26
4	"	2	12	7	"	2	27
4	"	3	13	7	"	3	28
4	"	4	14	7	"	4	29
4	"	5	15	7	"	5	30

Where electric bells are used in connection with other bells.

If cage is wanted ring station signal. Station tender will answer 1 bell.

Reply 1 bell to go up.

Reply 2 bells to go below.

If station is full of ore and station tender is wanted, ring station signal and do not answer back.

If 2-1-2 bells are run, engineer or station tender does not understand, repeat signal.

In case of danger or accident, ring station signal, station tender will reply 1 bell, ring 9 bells.

One copy of this code should be posted on the gallows frame, and one before the engineer.

To be in effect from and after June 1st, 1895.

This code is subject to change under certain conditions.

Penalty for Violation of Law Governing Inspector of Mines.

(Revised Codes.)

Section 8563. Inspection of Mines, Penalties.

Section 8563. Every person who violates any of the provisions of Article XIV., Chapter III., Part III., of the Political Code, relating to the inspection of mines, and every person who violates any of the provisions of Chapter XXIV., Title VII., Part III., of the Political Code, relating to dams and reservoirs, is guilty of a misdemeanor.

Chapter 3.

Protection to Underground Miners.

(Part I., Title X., Revised Codes.)

Section 8536. Safety Cages.

8537. Stoping Near Shaft.

8538. Running Cage at Excessive Speed.

8539. Maintaining Buildings Near Mouth of Shaft.

8540. Violations of Act—Penalties.

8541. Escapement Shaft.

8542. To What Mines Act Applicable.

8543. Penalties.

Section 8536. **Safety Cages.** It is unlawful for any corporation (or person) to sink or work, through any vertical shaft where mining cages are used, to a greater depth than three hundred feet, unless said shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees thereof, said cage to be also provided with sheet iron or steel casing not less than one-eighth inch in thickness; doors to be made of the same material shall be hung on hinges, or may be made to slide and shall not be less than five feet high from the bottom of the cage, and said doors must be closed when lowering or hoisting the men. Provided, that when such cage is used for sinking only, it need not be equipped with such doors as are hereinbefore provided for.

The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage, and must be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk.

The iron bonnet of the aforesaid cage must be made of boiler sheet iron, of good quality, of at least three-sixteenths of an inch in thickness, and must cover the top of such cage in such manner as to afford the greatest protection to life and limb from anything falling down said shaft.

It shall be the duty of the mining inspector and his assistant to see that all cages are kept in compliance with this section and to also see that the safety dogs are kept in good order.

Every person or corporation failing to comply with any of the provisions of this section is punishable by a fine of not less than three hundred dollars, nor more than one thousand dollars. (Laws of 1903, Chapter 60.)

Section 8537. Stopping Near Shaft. It is unlawful for any corporation or person operating any mine in this State worked through a vertical or incline shaft to stope within a less distance than twenty-five (25) feet of the said shaft when other work is being carried on below said stopping. (Laws of 1903, Chapter 82.)

Section 8538. Running Cage at Excessive Speed. It is unlawful for any person or corporation operating any mine in this State worked through a vertical or incline shaft, where a cage or other device is used for the purpose of hoisting or lowering men to run such cage when men are upon the same at a greater rate of speed than eight hundred (800) feet per minute. (Laws of 1903, Chapter 82.)

Section 8539. Maintaining Buildings Near Mouth of Shaft. It is unlawful for any person, company or corporation to erect or maintain any building or inclosure, used for a blacksmith shop or drying room within a distance of fifty (50) feet of the mouth of any tunnel or shaft, unless the same be fire-proof in its construction. (Laws of 1903, Chapter 82.)

Section 8540. Violation of Act—Penalties. The penalty for violating the provisions of any of the preceding sections is the same as provided in Section 8536 of the Revised Codes.

Provided, that when it shall appear that any engineer has violated the express order of his employer in running his engine at a greater speed than 800 feet per minute the engineer alone shall be subject to prosecution, and to the fine imposed by the provisions of this Act. (Laws of 1903, Chapter 82.)

Section 8541. **Escapement Shaft.** It is the duty of any person, company or corporation, who shall have sunk on any mine a vertical or incline to a greater depth than one hundred feet, and who shall have the top of such shaft or hoisting opening covered or enclosed by a shaft or building which is not fire-proof, and who shall have drifted on or along the vein or veins thereof, a distance of two hundred feet or more, after cross cutting to the same, and shall have commenced to stope, to provide and maintain to the hoisting shaft or the opening through which men are let into or out of the mine and the ore is extracted, a separate escapement shaft, raise, or opening, or an underground opening or communication between every such mine and some other contiguous mine, provided, that in case such contiguous mine belongs to a different person, company or corporation, the right to use the outlet through such contiguous mine, in all cases when necessary, or in cases of accident must be secured and kept in force. Where such an escapement shaft or opening shall not be in existence at the time that stoping is commenced, work upon such an escapement shaft or opening must be commenced as soon as stoping begins and be diligently prosecuted until the same is completed, and said escapement shaft, raise or opening shall be continued to and connected with the lowest workings in the mine. The exit, escapement shaft, raise or opening provided for in the foregoing paragraphs must be of sufficient size as to afford an easy passage way and if it be a raise, or shaft, must be provided with good and substantial ladders from the deepest workings to the surface. Whenever the exit or outlet herein provided for is not in a direct or continuous course, signboards plainly marked showing the direction to be taken must be placed at each departure from the continuous course. (Laws of 1897, page 66.)

Section 8542. **To What Mines Act Applicable.** This Act shall apply only to quartz mines in which nine or more men are employed underground, and shall not apply to mines not actually extracting ores, by stoping, nor to mines in which the shaft or hoisting opening, or hauling way is not covered by a shaft house, and has no building structure within thirty (30) feet of the shaft or opening nor to mines in which the hoisting

shaft or opening shall be covered by or enclosed in a fire-proof shaft or building. (Laws of 1897, page 67.)

Section 8543. **Penalties.** The penalty for violating any of the provisions of the preceding section is the same as provided in Section 8536 of the Revised Codes. (Laws of 1897, page 67.)

Chapter 4.

Storing of Explosives.

(Revised Codes. Part I., Title X.)

Section 8545. **Regulating Sales of Explosives.**

8546. **Storage of Explosives in Mines.**

8547. **Storage of Explosives in Cities.**

8552. **Penalties.**

8553. **Penalty in Case of Death caused by Violation of Act.**

Section 8545. **Regulating Sales of Explosives.** That every person, company or corporation, manufacturing, storing, selling, transferring, dealing in, or in any manner disposing of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substances, shall keep in a book for that purpose an accurate record of all transactions, with the date thereof, relating to the receiving and disposing of the same, which record shall show the amount of each such explosive received, by whom transported or conveyed, and each and every sale or other disposition made of such explosive, with the amount thereof, and the name of the person to whom delivery of the same was made, who shall be required to receipt therefor. Such record shall at all times be open to the inspection of the State Inspector of Mines, or any peace officer. (Act approved March 15, 1895.)

Section 8546. **Storage of Explosives in Mines.** No person, company or corporation shall store, deposit or keep in any mine a greater quantity than three thousand pounds of blasting powder, giant or Hercules powder, or other highly explosive substance, and no explosives named in this Section shall be stored, deposited or kept in any place where its accidental explosion would cut off the escape of miners working in said mine. (Act approved March 15, 1895.)

Section 8547. **Storage of Explosives in Cities, Etc.** No person, company or corporation, shall store, deposit or keep, within one mile of the limits of any city, town or village, any powder,

gunpowder, giant or Hercules powder, or other highly explosive substance, in greater quantities than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town or village, except in a magazine constructed as hereinafter described. Provided, that this Section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town or village, from storing powder for use in such mine in the manner prescribed in Sections 8546 and 8548 of this Act. Provided also, that this Section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale. (Act approved March 15, 1895.)

Section 8552. Penalties. Any person, or association of persons, violating any of the provisions of this Act, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. (Act approved March 15, 1895.)

Section 8553. Penalty When Death Caused by Violation of This Act. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance, that has been stored, kept, handled or transported, contrary to the provisions of the foregoing Sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants or employees, to so unlawfully store, keep, handle or transport the same, shall be guilty of manslaughter, and on conviction shall be punished by imprisonment in the State penitentiary for a period not exceeding ten years. (Act approved March 15, 1895.)

DIVISION II.

LAWS RELATING TO COAL MINING.

(Part III., Title VII., Chapter II., Article II., Revised Codes.)

Chapter I.

Inspector of Coal Mines.

- Section 1679. Appointment of Coal Mine Inspector, Force of Office.
 1680. Qualifications of Inspector.
 1681. Salary of Inspector.
 1682. Powers and Duties of Inspector.
 1683. Inspector Must not be Employed by Companies.
 1684. Instruments to be Furnished to Inspector.
 1685. Inspector Must Post Statement of Condition of Mine at Entrance.
 1686. Temporary Vacancies.
 1687. Inspector Ex-officio Sealer of Weights and Measures.
 1688. Standard and Test Weights to be Furnished.
 1689. Refusal of Mine Operator to Furnish Facilities for Examination.
 1690. Investigation of Charges for Neglect of Duty.
 1691. Penalties for Violation of Duty.

Section 1679. **Coal Mine Inspector—Appointment—Term of Office.** The Governor, by and with the advice and consent of the Senate, shall appoint one Coal Mine Inspector who shall hold office for a term of four years from the date of his appointment, unless otherwise removed by the Governor. (Laws of 1907, Chapter 133.)

Section 1680. **Qualifications of Inspector.** No person shall be eligible to the office of Coal Mine Inspector until he shall have attained the age of thirty years, must be a citizen of the United States, a qualified resident of the State of Montana and been actually employed at coal mining ten years prior to his appointment and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines, and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. And has passed a successful examination and whose certificate of qualification has been filed with the Governor by the Board of Examiners, as provided by law. (Laws of 1909, Chapter 46, page 55; see, also, law relating to Board of Examiners, page 19.)

Section 1681. **Salary of Inspector.** The salary of the State Coal Mine Inspector shall be twenty-five hundred dollars per annum and all necessary and traveling expenses. The State Coal Mine Inspector shall file with the State Treasurer a bond, approved by the Governor of the State, in the sum of five thousand dollars, for the faithful performance of his duties. (Laws of 1907, Chapter 133.)

Section 1682. **Powers and Duties of Inspector.** The State Coal Mine Inspector shall have the right and it is hereby made his duty, to enter, inspect, and examine any coal mine in this State and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine. He shall also have the right and it is his duty to make inquiry into the condition of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the acts providing for the regulation of coal mines or other acts which may hereafter be enacted governing coal mines, have been complied with. The owner, operator or superintendent of such mine is hereby required to furnish the means necessary for such entry, inspection, examination, inquiry and exit. It shall also be the duty of the said Coal Mine Inspector to carefully examine all the coal mines in operation in this State at least every three months and oftener if necessary; to see that every precaution is taken to insure the safety of all workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. (Laws of 1907, Chapter 133.)

Section 1683. **Inspector Must Not Be Employed by Companies.** The said Coal Mine Inspector while in office shall not act as agent for any corporation, superintendent or manager of any mines, and shall in no manner whatever be under the employ of mining companies, and it shall be the duty of the said Coal Mine Inspector on or before the first day of January of every year, to make a report to the governor of his proceedings as such Coal Mine Inspector and the conditions of each and

every coal mine in the State, stating therein all accidents that have happened in or about said mine or mines, and to set forth in said report all such suggestions as he may deem important as to any further legislation on the subject of coal mining. (Laws of 1907, Chapter 133.)

Section 1684. Instruments to Be Furnished to Inspector. For the more efficient discharge of the duties herein imposed upon him, the said Coal Mine Inspector shall be furnished at the expense of the State with an anemometer, a safety lamp and whatever other instruments or other appliances which may be required in order to carry into effect the provisions of the acts regulating coal mines. (Laws of 1907, Chapter 133.)

Section 1685. Inspector to Post Statement of Mine at Entrance. The Coal Mine Inspector shall post up in some conspicuous place at the top of each mine visited and inspected by him, a plain statement of the conditions of such mine, showing what in his judgment is necessary for the better protection of the lives and health of persons employed in said mine; such statement shall give the date of inspection and be signed by the said inspector. He shall also post a notice at the landing used by the men, stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars. He must observe especially that the code of signals provided in the act regulating coal mines between engineer and top men and bottom men, is conspicuously posted for the information of all employees.

In case of the death, resignation, or removal from office of the State Coal Mine Inspector before the expiration of the term of office, the Governor shall appoint a duly qualified person as provided in this Act, to fill the vacancy for the unexpired term. (Laws of 1907, Chapter 133.)

Section 1686. Temporary Vacancy in Office, How Filled. In case the State Coal Mine Inspector becomes incapacitated and cannot perform the duties of his office for a longer period than two weeks, it shall be the duty of the Governor to deputize some competent person having the qualifications provided in this Act, to fulfill the duties of the said inspector until the said inspector shall return to the performance of his official duties, and the person deputized by the Governor shall be paid

by the State out of any moneys in the general fund of the State not otherwise appropriated, for the services rendered, at the same rate received by the State Coal Mine Inspector. (Laws of 1907, Chapter 133.)

Section 1687. Inspector Ex-Officio Sealer of Weights and Measures. The State Coal Mine Inspector is hereby made, equally with the County Clerk, ex-officio sealer of weights and measures, insofar as the same relates to coal mines and coal mining, and as such is empowered to test and compare all weights and measures used in weighing and measuring coal at any coal mine, or used in measuring air passages or other openings in coal mines, with the standards of weights and measures kept by the County Clerk of any county. Upon the written request of any coal mine owner or operator or ten coal miners employed at any one mine, it shall be his duty to test and prove any scale or scales at such mine against which complaint is directed, and if he shall find that they or any of them do not weigh correctly, he shall call the attention of the mine owner or operator to the fact and direct that said scale or scales be at once overhauled and readjusted so as to indicate only true and correct weights, and he shall forbid the further operation of such scale until such scales are adjusted. In the event that such tests shall conflict with any test made by any county sealer of weights and measures, or under and by virtue of any municipal ordinance or regulation, then the test by such mine inspector shall prevail. (Laws of 1907, Chapter 133.)

Section 1688. Standard Test Weights to Be Furnished to Inspector. For the purpose of carrying out the provisions of this Act, the State Coal Mine Inspector shall be furnished by the State with a complete set of standard weights suitable for testing the accuracy of track scales, and of all smaller scales at mines; said test weights shall remain in the custody of the State Coal Mine Inspector for use at any point within the State, and for any amounts expended by him for the storage, transportation or the handling of the same, he shall be fully reimbursed upon making entry of the proper items in his expense voucher. (Laws of 1907, Chapter 133.)

Section 1689. Refusal of Mine Operator to Furnish Facilities for Examination. In any operator shall refuse to permit such inspection or to furnish the necessary facilities for making

such examination and inspection, the inspector shall file his affidavit, setting forth his refusal, with the judge of the district court in said county in which said mine is situated, either in term—time or vacation, and obtain an order on such owner, operator or agent so refusing as aforesaid, commanding him to permit and furnish such necessary facilities for the inspection of such coal mine, or to be adjudged to stand in contempt of court and punished accordingly. (Laws of 1907, Chapter 133.)

Section 1690. Investigation of Charges for Neglect of Duty. Whenever a petition signed by fifty or more reputable citizens, legal residents of the State, verified by oath by two or more of the said petitioners, and accompanied by a bond in the sum of five hundred dollars, running to the State, executed by two or more freeholders, approved and accepted by the Clerk of the District Court of the county or counties of their residence, conditioned for the payment of all costs and expenses arising from the investigation of the charges, setting forth that the Inspector of Mines neglects his duties or is incompetent, or is guilty of malfeasance in office, it shall be the duty of the Judge of the District Court of the county to issue a citation in the name of the State to the said inspector, to appear at not less than five days' notice, on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners; such action shall be prosecuted by the County Attorney. (Laws of 1907, Chapter 133.)

Section 1691. Penalties for Violation of Duty. If the court finds that the said Mine Inspector is neglectful of his duties or incompetent to perform the duties of his office, or that he is guilty of malfeasance in office, the court shall certify the same to the Governor, who shall declare the office of said Mine Inspector vacant, and proceed in compliance with the provisions of this Act to supply the vacancy; and the costs of such investigation shall, if the charges are sustained, be imposed upon the State Coal Mine Inspector. (Laws of 1907, Chapter 133.)

Chapter 2.

Board of Examiners.

(Laws of 1909, Chapter 64, p. 75.)

An Act to create a Board of Examiners for Examining Applicants for the Position of Coal Mine Inspector of the State of Montana and Prescribe the Qualifications of Applicants, and Prescribing the Rights and Duties and fixing the Compensation of such Board of Examiners, and the Manner of Appointing said Coal Mine Inspector of the State of Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Coal Mine Inspector—Board of Examiners—Appointment. From and after a period of two months, subsequent to the date of the passage and approval of this Act, the Governor shall, upon the recommendation of the coal miners of this State, appoint one practical coal miner actively employed in coal mining in the State of Montana, and one mine manager, or superintendent, who shall be recommended to the Governor by the majority of the coal mine operators of the State of Montana, and one practical coal mining engineer; the three so named by the Governor shall constitute a Board of Examiners to pass upon the qualification of applicants for Coal Mine Inspector of the State of Montana.

Section 2. Same—Examination—Scope. It shall be the duty of the said board to examine into the qualifications of all applicants for appointment to the position of Coal Mine Inspector of the State of Montana, by conducting a thorough examination as to the knowledge of mine working, ventilation, gases, fire damp, machinery, and actual experience in the underground coal mining, and to acquaint themselves with the person, character, habits and general worthiness of each applicant. The general examination shall be in writing and manuscript and other papers of all applicants, together with the tally sheets and the solution of each question as given by the examining board shall be filed with the Secretary of the State as public documents, but such applicants shall undergo an oral examination pertaining to explosive gases, and safety lamps. All candidates shall be allowed the use of such text books as are proper during the examination. The Board of Examiners shall confine the examination of applicants, to questions as designated in Section 2, of

this Act. No person shall be certified as competent whose average per cent shall be less than 75 per centum and certificate shall show what per cent the applicant has attained, and such certificate shall be valid only when signed by a majority number of the Examining Board, Examining Board shall immediately after the examination, furnish to each person who came before it to be examined a copy of all questions, whether oral or written which were given at the examination on printed slips of paper, and to be marked, solved right, imperfect or wrong, as the case may be, together with the certificate of competency to each candidate who shall have made at least 75 per centum.

Section 3. Same—Applications—How Made. Applications for examination for Coal Mine Inspector to said Board must be made in writing and accompanied by an affidavit showing that the applicant is a citizen of the United States, a resident of the State of Montana, and that he has attained the age of thirty years; has had at least ten years experience in underground coal mining in the United States and at least one years experience in underground coal mining in the State of Montana.

Section 4. Same—Appointment—Who Ineligible. The Board of Examiners shall file with the Governor the names of all persons who shall have successfully passed the examination. From those so named the Governor shall select one person to be State Coal Mine Inspector, provided that any one who has served capably as State Coal Mine Inspector for one full term upon making written application to the board setting forth these facts, shall be certified to the Governor as properly qualified for appointment but no man shall be eligible for the appointment as State Coal Mine Inspector who has any pecuniary interest in any coal mine either as owner or employer.

Section 5. Same—Vacancy—How Filled. As often as vacancies occur in the office of Coal Mine Inspector caused either by death, resignation, or removal for malfeasance or as provided for in Section 12, of this Act creating the office of Coal Mine Inspector, or as otherwise determined as with other officers of the State. The Governor shall fill the same by appointment for the unexpired term by selecting a person whose name is on file in his office as provided for in Section 4 of this Act.

Section 6. Examining Board—Meetings—Oath of Office. The Board of Examiners first appointed under the provisions of this

Act shall meet in the city of Helena, in the office of the State Coal Mine Inspector on the 20th day of June, 1909, at which time and place they shall proceed to organize themselves and shall take the following oath of office before some person duly authorized by law to administer an oath, "We do solemnly swear (or affirm) that we will perform the duties, devolving upon us to the best of our ability, and that in rejecting or recommending applicants for the position of Coal Mine Inspector of the State of Montana, we will be governed by the evidence of qualification to fill the position under the law creating the same, and not by any consideration of political affiliation or personal favors; that we will certify all whom we may find qualified, and who shall have passed the required examination, according to the Act and none other, to the best of our knowledge and judgment." The second meeting of said Board for the purpose of examining applicants for the position of State Coal Mine Inspector shall be held on the second Monday in January, 1911, in the city of Helena, at the State Capitol in the office of the State Coal Mine Inspector, and on the second Monday in January every two years thereafter. The Secretary of State shall furnish whatever blanks, blank books, printing or stationery the board may require in the discharge of its duties. Public notice shall be given by the Board of Examiners, through the posting of notices in the post office in the several coal mining towns throughout the State at least fifteen days previous to the date of examination, and by publication in at least two daily papers published in the city of Helena, for ten consecutive days previous to the holding of the examination.

Section 7. **Same—Examination—Certificate of Fitness.** The board shall then proceed to the examination of those who may present themselves as candidates for said office, and who shall have complied with the requirements necessary to entitle such applicant to be examined as provided for in Section 3 of this Act, and after a thorough examination as to knowledge and qualification of said applicants then, the said Board of Examiners, shall certify to the Governor the names of all such applicants, who have passed the required examination for the position of Coal Mine Inspector as required under the provisions of the law.

Section 8. **Same—Compensation—Expenses.** The Board of Examiners shall receive Six Dollars (\$6.00) per diem for the

time actually engaged in the performance of the duties imposed upon them in this Act and their actual expenses, such compensation to be paid out of the general fund in the manner provided by law.

Section 9. Candidates—Appointment—How Made. The Governor shall, from the name (names?), certified to by the said Board of Examiners, appoint a Coal Mine Inspector for the State of Montana, who shall hold office for the period of time as required by the law creating such office.

Section 10. Board—Appointment. Four years after January 1, 1909, and every four years thereafter, the Governor shall appoint a Board of Examiners to pass upon the qualification of applicants for Coal Mine Inspector, which shall be constituted, sworn and paid and shall perform the same duties as the Board provided for in Section one (1) of this Act, during the term for which they were appointed and from the names certified to by them the Governor shall appoint a Coal Mine Inspector for the State of Montana, as herein provided for.

Section 11. Inspector—Reappointment Not Prohibited. Nothing in this Act shall be construed as preventing the re-appointment of any Coal Mine Inspector, who shall have successfully passed the required examination and qualified as hereinbefore provided for.

Section 12. Examining Board—May Adopt Rules. Each successive Board of Examiners shall have the power to adopt their own rules for examination as will best serve the purposes of this Act; said rules not to conflict with the manner of examination as prescribed in Section Two (2) of this Act.

Section 13. Same—Vacancies—How Filled. Vacancies upon the said Board of Examiners shall be filled by the Governor.

Section 14. Same—Expenses—Appropriation. Sufficient money to defray the expense of the Board is hereby appropriated.

Section 15. Repealing Clause. All Acts and parts of Acts in conflict with this Act are hereby repealed.

Section 16. Act Takes Effect—When. This Act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 4, 1909.

Chapter 3.
Regulation of Coal Mines.
(Revised Codes.)

- Section 1692. Maps of Coal Mines to be Furnished Inspector.
1693. Additions to the Map to be Made, When.
1694. Failure to Provide Maps.
1695. Coal Mine Escapes.
1696. Escapes, How Constructed.
1697. Ventilation of Coal Mines.
1698. Ventilation, Enforced by the Inspector.
1699. Examination for Explosive Gases.
1700. Unlawful Working of Coal Mines.
1701. Foremen Must Have Certificate From Inspector—Incompetent Persons not to be Employed.
1702. Ventilation Furnaces, How Built.
1703. Hoisting From and Lowering Into the Mine.
1704. Signals, Cage, How Loaded, and Protection.
1705. Same.
1706. Penalties.
1707. State to Furnish Appliances.
1708. Duty of Mine Operator to Furnish Wash Houses.
1709. Check Weighman.
1710. False Weights.

Section 1692. **Maps of Coal Mines to be Furnished to Inspector.** The owner or operator of any coal mine in the state, must make or cause to be made, an accurate map or plan of the mine, which must exhibit the openings or excavations, the shafts, slopes, or tunnels, the entries, rooms, or other workings, must show the direction of the air currents therein, accurately delineate the surface section lines of the coal lands controlled by the owner of said mines and show the exact relation to and proximity of the workings of said mine to said surface lines; said map, or plan, must also show the exact date of such survey made, and indicate the boundary line of the most advanced face of the workings at such date; and in case more than one seam of coal is opened or worked, a separate map or plan as aforesaid, must, if desired by the Inspector, be made of the working in each seam. The map, or plan, or a true copy thereof, with the record of all surveys of said boundary lines and underground workings, must be delivered to the State Inspector of Mines, and the original or a true copy of the same must be retained for reference and inspection at the office of the coal mine. The maps and plans so delivered to the Inspector of Mines are the property of the

State, and must be transferred to his successor in office. Maps of mines filed with the Inspector must be open to the examination of the public in the presence of the inspector, but in no case must any copy of the same be made without the consent of the owner, operator, or his agent.

Section 1693. Additions to Maps to be Made—When. After the maps and plans herein provided are completed, thereafter in July of each year, the owner or operator of every coal mine must cause surveys to be made of all alterations and extensions of the workings made during the year preceding, and must have the records and results of the survey duly entered upon the maps of the inspector, and upon that kept at the mine. The said extensions must be placed upon the Inspectors' map, and the map returned to the inspector within thirty days from the completion of the survey. When any coal mine is worked out, and is about to be abandoned the owner or operator must have the maps or plans thereof extended to include all the excavations made showing the most advanced workings of every part of the mine and the relation of such boundaries to marked boundaries on the surface.

Section 1694. Failure to Provide Maps—Effect. Whenever the owner or operator of any coal mine neglects or refuses to furnish the inspector the map or plan of such coal mine or the extensions thereto, as provided for in this chapter, the inspector is authorized to make or cause to be made, an accurate map or plan of such coal mine, at the expense of the owner, and the cost may be recovered from the owner or operator, in the same manner as other debts, in the name of the state.

Section 1695. Coal Mine Escapes. For all coal mines in this State, when more than six men are employed, other than the owners or operators of such mine, whether worked by shaft, slope or drift, there must be provided and maintained in addition to the hoisting shaft or opening, a separate escapement shaft or opening to the surface, or an underground opening or communication between every such mine and some other contiguous mine, as may be approved by the Mine Inspector, as coming within the requirements of this Chapter, which openings constitute two separate and available means of ingress and egress to all persons employed in the mine, and all passage-ways com-

munnicating with the escapement shaft, or places of exit from main hauling-ways to escapement shafts must be at least five feet wide and five feet high.

Section 1696. **Escapes—How Constructed.** Every escapement shaft must be separated from the main shaft by such extent of natural strata as shall secure safety to the men employed in such mines, and provided with either stairways, or cages and hoisting apparatus, as in the judgement of the inspector of mines may be sufficient to insure the safe and speedy removal of all persons within the mine in case of danger. No obstructions of any kind must be permitted in any escapement shaft that would in any way impede travel through the same. The time allowed for completing such escapement shaft or making such communication with an adjacent mine, as is required by the terms of this Chapter, is for all mines already opened or in process of development on the sixth day of March, 1891, one year for sinking any shaft two hundred feet or less in depth, and one additional year or pro rata portion thereof for every additional two hundred feet, or fraction thereof; but for mines which are opened thereafter the time allowed shall be two years for all shafts more than two hundred feet in depth and one year for all shafts two hundred feet or less in depth, and the time must be reckoned in all cases from the date on which coal is first hoisted from the original shaft for sale or use, and it is the duty of the inspector of mines to see that all escapement shafts are begun in time to secure the completion within the time herein specified.

Section 1697. **Ventilation of Coal Mines.** The owner or operator of every coal mine, whether operated by shaft, slope or drift, must provide and maintain for every such mine a good and sufficient amount of ventilation for men and animals employed therein; the amount of air in circulation to be in no case less than one hundred cubic feet for each man, and six hundred cubic feet for each animal per minute, measured at the foot of the down-cast, and the same to be increased at the discretion of the inspector according to the character and extent of the workings, or to the amount of powder used in blasting, and the volume of air must be forced and circulated to the face of every working place throughout the mine so that the mine is free from standing powder smoke and gases of every kind. All doors set on main

entries for the purpose of conducting ventilations must be so constructed and hung as to close of themselves when opened, and must be made sufficiently tight to effectually obstruct the air currents.

Section 1698. Ventilation to be Enforced by Inspector. In all the larger mines, a suitable person as doorkeeper must be kept in attendance upon such doors, to see that they are kept securely closed and the air currents properly controlled. Whenever the inspector finds men working without sufficient air or under any unsafe conditions, he must give the owner or operator a reasonable notice to rectify the same; upon the neglect or refusal of the owner or operator of the mine to put the same in a safe condition, as required by the inspector, the inspector must proceed by an action to enjoin the further workings of the mine until the law is complied with. All actions for an injunction must be brought by the county attorney, or by the Attorney General in the name of the State.

Section 1699. Examination for Explosive Gases. All mines in which explosive gases are known to exist must be examined every morning by a duly authorized agent of the owner or operator, to determine whether there are any dangerous accumulations of gases or lack of ventilation or obstructions to roadways or any other dangerous conditions and no person must be allowed to enter the mine until the agent has reported all the conditions safe for beginning work; the agent must make a daily record of the conditions of the mine in a book kept for that purpose, which shall be open at all times to the examination of the inspector. The current of air in mines must be split, so as to give a separate current to at least every one hundred men at work, and the inspector has the discretion to order a separate current for a smaller number of men if special conditions render it necessary. In case the entries or roadways of any mine are so dry as to become filled with dust, the owner or operator of the mine is required to have such roadways regularly and thoroughly sprinkled and it is the duty of the inspector to see that in all mines every practicable precaution is taken against accidents from the careless handling of powder within the mine.

Section 1700. Unlawful Working of Coal Mines. In no case must more powder be stored in the mine at any one time than in the discretion of the inspector is necessary for each day's use.

It is unlawful for coal miners in any mine to charge a blasting hole with the loose powder or otherwise than with the properly constructed cartridges; and in dry and dusty mines it is unlawful to load cartridges in the mines except with powder cans constructed for the purpose. It is unlawful for the owner or operator of any mine to permit miners to work in said mines with tools prohibited by law. It is unlawful for any owner or operator of any mine where dangerous or explosive gases are known to exist to employ any person as foreman or boss of said mine, who does not possess a thorough practical knowledge of the nature and danger of inflammable or explosive gases and understand the means and appliances for controlling them. It is unlawful for any person to act as foreman or mine boss of any mine in which inflammable gases are known to exist, who does not possess a thorough, practical knowledge of the nature and danger of inflammable or explosive gases, and understand the means and appliances for controlling them.

Section 1701. Foreman Must Have Certificates From Inspector—Incompetent Persons Not to be Employed. It is unlawful for any person to act as foreman or mine boss of any mine in which inflammable gases are known to exist who does not possess a certificate from the State Mine Inspector certifying to his competency for managing the underground workings of mines, together with a thorough knowledge of all gases met with in coal mines and of the most approved means of appliances for controlling them, and the Inspector of Mines is authorized to examine all foremen or mine bosses upon their competency under the provisions of this Chapter and issue his certificate to those whom he considers qualified to act as such foreman or boss within the meaning of this law. It is unlawful for any owner or operator of a coal mine to employ persons underground whose duties may involve contact with inflammable gases or the handling of explosives, who have not had experience in such duties, unless all such employees are placed under the immediate charge and instruction of such number of competent men as to secure the safety of other persons employed in the same mine.

Section 1702. Ventilation Furnaces—How Built. The ventilation required by this Chapter may be produced by any suitable appliances, but in case a furnace is used for ventilating purposes it must be built in such a manner as to prevent the communica-

tion of fire to any part of the works by lining the upcast with incombustible material for a sufficient distance up from the furnace. It is unlawful to use a furnace for ventilating purposes or for any other purpose that emits smoke into any compartment constructed in or adjoining any hoisting shaft or slope where the hoisting shaft or slope is the only means provided for the ingress or egress of persons employed in said coal mines. It is unlawful where there is but one means of ingress and egress provided at a coal shaft or slope to construct and use a ventilating furnace that emits smoke into a shaft as an upcast where the shaft or slope used as a means of ingress and egress by persons employed in said coal mines is the only means provided for furnishing air for persons employed therein.

Section 1703. Hoisting From and Lowering Into the Mine. The owner or operator of a coal mine operated by shaft must provide safe means of hoisting and lowering persons in a cage covered with boiler iron, so as to keep safe as far as possible persons descending into and ascending out of said shaft, and said cage must be furnished with guides to conduct iron slides through such shaft, with a sufficient brake on every drum to prevent accident in case of the giving out or breaking of the machinery; and such cages must be furnished with safety catches intended and provided as far as possible to prevent accident in case of cable breaking or the loosening or disconnecting of machinery. The owner or operator of every coal mine operated by shaft and steam power must place competent persons at the top and bottom of such shaft for the purpose of attending to signals while the men are being lowered or hoisted out of the mine; they must be at their post of duty at least thirty minutes before the hoisting of coal is commenced in the morning and remain at least thirty minutes after the hoisting of coal has ceased at night. It is also their duty to see that the men do not carry any tools, timber, or material with them on the cage, and that only the proper number of men are allowed upon the cage at one time. A sufficient light must be furnished at the top and bottom of the shaft to insure as far as possible the safety of persons getting on or off the cage.

Section 1704. Signals—Cages, How Loaded—Protection. A suitable code of signals between the bottom man and the top man and engineer must be established to provide and insure the

safety of persons being lowered into and hoisted out of any shaft; said code of signals so established must be conspicuously posted at the top and bottom of the shaft and in the engine room. No person must ride upon a loaded cage or car used for hoisting purposes in any shaft or slope, and in no case must more than twelve persons ride in any cage or car at any one time, nor must any coal be hoisted out of any coal mine, except in cases where coal is being hoisted out of a slope which is not less than ten feet wide and only one track operated therein, while persons are descending into such mine. The number of persons permitted to ascend out of or descend into any coal mine at one time must be determined by the inspector, and they must not be lowered or hoisted more rapidly than five hundred feet per minute.

The top of each and every shaft and the entrance to each and every intermediate working vein must be securely fenced by gates, properly protecting such shaft and the entrance thereto, and the entrance to every abandoned stope, air or other shaft must be securely fenced off.

Section 1705. **Same.** All underground, self-acting or engine planes, with single track, on which coal cars are drawn and persons travel, must be provided with proper means of signaling between the stopping places and ends of said planes, and sufficient places of refuge at the sides of such planes must be provided at intervals of not more than ten yards, and on all other single planes or gangways, twenty yards, and they must not be less than six feet wide and whitewashed or otherwise distinguished from the surrounding walk. The bottom of every shaft must be supplied with a traveling way, to enable men to pass from one side of the shaft to the other without passing under or over the cage. All sumps must be securely planked over, so as to prevent accident.

Section 1706. **Violation—Penalties.** Any person neglecting or refusing to perform the duties required by any of the provisions of this Chapter is punishable as provided in Section 8559 of the Revised Codes.

Section 1907. **State to Furnish Appliances.** The Inspector of Mines is authorized to provide, at the expense of the State, all necessary air meters, barometers or other instruments for the

use of himself and deputy in making all investigations and inspection, as required by this Chapter.

Section 1708. Duty of Mine Operators to Furnish Wash Houses for Employees. It shall be the duty of the owner, operator or superintendent of any coal mine in the State of Montana, to provide a suitable building, not an engine or boiler house, which shall not be over eight hundred feet from and convenient to the principal entrance of such mine, for the use of the persons employed therein for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall be maintained in good order, be properly lighted and heated and supplied with pure cold and warm water, and be provided with facilities for persons to wash, and a suitable locker for each person to be used by him as a repository for his clothes. If any owner or operator of a coal mine shall fail to construct and maintain a wash house as herein provided, he shall be subject to a fine of not less than twenty-five dollars per day for each day of such violation. If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building, or any part thereof, or any of the appliances or fittings used for supplying light, heat or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this act, and shall be subject to a fine of not less than five dollars nor more than one hundred dollars or imprisonment of not less than five days nor more than sixty days, or both such fine and imprisonment. (Laws of 1907, Chapter 134.)

Section 1709. Check Weighman. The weighman employed at any mine shall subscribe to an oath or affirmation before a justice of the peace, or other officer authorized to administer oaths, to do justice between employer and employee, and to truly and correctly weigh the output of coal from the mines as herein provided. The miners employed by or engaged in working for any mine owner, operator or lessee of any mine in this state shall have the privilege, if they desire, of employing at their own expense a check weighman, who shall have like equal rights, powers and privileges in the weighing of coal as the regular weighman and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be kept conspicuously posted in the weigh office, and any weigher of

coal or person so employed, who shall knowingly violate any of the provisions of this article, or any owner, operator or agent of any coal mine in this state who shall forbid or hinder miners employing or using a check weighman as herein provided, or who shall prevent or wilfully obstruct any such check weighman in the discharge of his duty shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars nor more than Five Hundred Dollars for each offense, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or by both such fine and imprisonment, proceedings to be instituted in any court having competent jurisdiction. Whenever the inspector of mines, or deputy inspector of mines shall be satisfied that the provisions of this section have been wilfully violated, it shall be his duty to forthwith inform the prosecuting attorney of any such violation, together with all the facts within his knowledge and the prosecuting attorney shall thereupon investigate the charges so preferred, and if he be satisfied that the provisions of this section have been violated, it shall be his duty to prosecute the person or persons guilty thereof. (Laws of 1901, pages 65-66.)

Section 1710. False Weights—Penalty. Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines, so arranged or constructed that fraudulent weighing may be done thereby, or who shall knowingly resort to or employ any means whatsoever, by reason of which such coal is not correctly weighed and reported in accordance with the provisions of this Article, shall be deemed guilty of a misdemeanor, and shall, upon conviction, for each such offense, be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for a period not to exceed sixty days, or by both such fine and imprisonment, proceedings to be instituted in any court of competent jurisdiction. (Laws of 1901, page 66.)

WEIGHT OF COAL.

(Revised Codes.)

Section 2023. Standard Ton and Bushel. The ton consists of twenty hundred pounds, but a ton of mineral coal is expressed by the conventional quantity of twenty-six and one-third

bushels of seventy-six pounds each. A bushel of each of the articles hereinafter named consists of the number of pounds affixed to each, to-wit.

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Coal, Mineral	76
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Any person, persons, companies or corporations who shall violate the provisions of this section by demanding, exacting or taking more than the prescribed number of pounds per bushel or per ton as fixed by the provisions of this Section, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars, nor more than Five Hundred Dollars, or by imprisonment in the county jail not less than three nor more than six months or by both such fine and imprisonment, in the discretion of the court. (Laws of 1901, page 137.)

Depositing Coal Slack in Streams Prohibited.

(Revised Codes.)

Section 8557. **Depositing Coal Slack in Streams.** All persons owning or having in operation, and all persons who may hereafter own or put in operation in the State of Montana, either in person or by agent, any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, are hereby required to so care for any coal slack or other refuse emanating from such coal mining operation as to prevent the same from mingling with the waters of such streams. (Laws of 1903, Chapter 6.)

Section 8558. **Same—Penalty.** All persons owning or operating, or who may hereafter own or operate any coal mine on any stream containing fish or water which is used for domestic purposes, or for irrigation, who shall dump, cart or deposit, or cause or suffer to be deposited in such stream any such coal-slack or other refuse emanating from such coal-mining operation, shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not less than two hundred (\$200) dollars nor more than five hundred (\$500) dollars for each and every offense. (Laws of 1903, Chapter 6.)

Penalty For Violation of Law.

(Revised Codes.)

Section 8559. **Regulation of Coal Mines.** Every person who violates any of the provisions of Chapter XX., Title VII., Part III., of the Political Code, relating to the regulation of coal mines, is guilty of a misdemeanor.

Chapter 4.**Accident and Total Disability Insurance for Coal Miners.**

(Act of March 4, 1909.)

SENATE BILL NO. 56.

An Act to create a State Accident Insurance, and Total Permanent Disability Fund, for coal miners and employees at coal washers in the State of Montana, and providing for the maintenance and management of the same; extending and defining the duties of the State Auditor; and fixing penalties for the violation of the provisions of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **To Whom Act Applies.** All workmen, laborers and employees employed in and around any coal mines, or in and around any coal washers in which coal is treated, except office employees, superintendents and general managers, shall be insured in accordance with the provisions of this Act, against accidents occurring in the course of their occupations.

Section 2. **How Fund Raised—To Whom Paid.** All corporations, partnerships, associations or persons engaged in the business of operating any coal mine or coal washers in the State of Montana shall pay to the Auditor of the State, within five days after the monthly wages at the particular mine shall have been paid, one cent per ton on the tonnage of coal mined and shipped, or sold locally, or having been mined is ready for shipment or sale during the month for which the wages were paid; and all persons mentioned in Section 1 employed in and about coal mines shall allow to be deducted from their gross monthly earnings one percent thereof, the deduction to be made by the agent, manager, or foreman of any corporation, association, partnership, person or persons engaged in the business of operating any coal mine or coal washer, and paid to the State Auditor within five days after such monthly wages have been paid.

Section 3. Agents to Report Tonnage Mined—Contracts Waiving Effect of Act Void. The agent, manager, foreman, or accountant of any corporation, partnership, association, person or persons, engaged in mining coal in Montana, shall on or before the fifth day succeeding the pay day at his respective mine, make report under oath to the State Auditor as to the tonnage mined and subject to the payment of one cent per ton thereon; and stating the gross earnings subject to the one percent deduction as provided in this Act, accompanied by a certified check in full for the amount of the tax provided in Section 2 of this Act. It shall be unlawful for any person, employer, employee, corporation, partnership, association or union to make any contract waiving, avoiding or affecting the full legal effect of this Act.

Section 4. Receipt of Funds by Auditor—Duties—Liabilities of Sureties State Treasurer—Interest. It is hereby made the duty of the State Auditor to receive all moneys as provided for in this Act, and to send the proper acknowledgement to the person making such remittance. The Auditor shall pay all moneys so received by him to the State Treasurer, who shall keep such sums in safe custody in a distinct fund to be known as the Employers and Employees Co-Operative Insurance and Total Permanent Disability Fund. The State Treasurer must invest the surplus of this fund in safe and convertible State, County or City bonds or bonds of the United States. All interest accruing from such investments shall be accredited to this insurance fund. The bond of the State Treasurer shall be liable for such funds, and it shall be his duty to keep accurate accounts of the receipts and disbursements of such money.

Section 5. Payment of Death Claims—To Whom—Duty of Auditor—Personal Inquiries—How Compensation Paid. The Auditor of State shall keep full statistics of the operation of this function of his department in the event of death by accident of an employee insured under this act, who shall have come to his death in the course of his employment and by causes arising therein. The Auditor of State upon being satisfied by adequate evidence of such death shall issue a warrant upon the State Treasurer to persons dependent upon the deceased, these warrants to issue in the following order: (1.) To surviving wife and child, or children, in equal shares, and if neither wife or

child, or children be alive, then (2.) to surviving parents who are dependent, or partially so, upon the deceased; if none, then (3.) to such other relative of the deceased as survive him and are dependent upon him, in the sum of Three Thousand (\$3,000.00) Dollars.

A workman receiving injuries which permanently incapacitate him from the performance of work shall receive a compensation monthly, not to exceed One Dollar (\$1.00) a day for each working day. Compensation for permanent injury shall not be allowed until after the expiration of twelve weeks from the time such injuries were sustained, provided that the medical practitioner examines and pronounces the injury as being permanent, compensation may then be allowed from commencement of disability. The Auditor of State, however, may, when in his judgement he deems it advisable, use so much of the funds as is necessary in the procuring of a medical practitioner, for the purpose of examination or treatment under this Act, for such injuries as herein mentioned compensation shall continue during disability, or until settlement is affected as provided for in Section 9 of this Act. Total or permanent disability shall consist of the loss of both legs or both arms, the total loss of eye sight or paralysis, or other conditins incapacitating him from work, caused by accident, or injuries received during employment as specified by this Act; provided, that if death, as a result of the injury, ensues at a period not longer than one year from date of accident the sum of Three Thousand Dollars (\$3,000.00) shall be paid the deceased workman's dependents as hereinbefore provided. The representatives of a foreigner, except the widow or dependent children, who were not living within the country at the time of the accident, shall have no claim for the compensation provided for in this Act. Such foreign person shall file their foreign address, if married, with the office of their employer with whom they are employed and duplicate thereof with the State Auditor, giving their wife's name and dependent children, and such other identification as may be required by the Auditor of State. Loss of any limb, or eye, caused by accident to a workman while employed as provided for in this Act, shall be compensated for in the sum of One Thousand (\$1,000.00) Dollars, provided, that in the event there shall be no funds available in the fund to pay the Auditor's

warrant when drawn the same shall draw interest out of the fund at the rate of ten per cent per annum until such warrant is called for payment by the Treasurer which shall be as soon as the fund is sufficient to pay the same with its interest then due.

Section 6. Monthly Payments—Applications for. Where a workman is entitled to monthly payments under this Act, he shall file with the Auditor of State his application for such, together with a certificate from the County physician of the County wherein he resides, attested before a Notary Public.

Section 7. Fraudulent Claims—Duty of Auditor. If any person or persons, company or corporation who is then paying into this insurance fund shall believe that any person or persons are obtaining, or having made application to obtain benefits hereunder improperly or fraudulently and shall file his written request that such person's claim be investigated, the State Auditor must upon the receipt of such request, request the Secretary of the State Board of Health to make an examination for the purpose of this Act and his certificate as to the condition of the person or persons with reference to their rights to benefit under this Act shall be conclusive evidence as to his condition.

Section 8. Claimant Refusing to Submit to Examination—Effect. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation under this Act shall be suspended until such examination takes place, and shall absolutely cease unless he submits for an examination within one month after being required to do so.

Section 9. Monthly Payments—Redemption by Lump Sum—Amount. When any monthly payment has been made to a workman for any period whatever, the liability under this Act, may on the application by, or on behalf of the workman, be redeemed by the payment of a lump sum, which in no instance shall be in excess of the amount specified as death indemnity, and all monthly payments made prior shall be deducted from such settlement.

Section 10. Annual Report of Auditor—Plenary Power to Adjust Claims. The Auditor of State shall report in January of each year to the Governor of the experience and business of this function of his department, and shall have plenary power to determine all disputed cases which may arise in its administra-

tion not herein provided for, and to recommend in his report the rates or premium necessary in order to preserve such fund, and shall order paid such indemnification as herein provided. He shall have power to define the insurance provisions of this Act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths, or to total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this Act.

Section 11. Release of Employer—Benefits Exempted—Suit—Forfeiture of Benefits. No money paid or payable in respect of insurance or monthly compensation under this Act shall be capable of being assigned, charged, taken into execution or attached, nor shall the same pass to any other person by operation of law; and the acceptance of pecuniary benefit under the provisions of this Act shall operate to release the person or persons, corporation, partnerships, or associations causing such injuries or death for which benefits are so claimed, who shall have paid the assessment provided in Section 2 of this Act, and also the employer, officers and agents thereof from all liability and claim arising from such injuries or death. The commencement of a suit to recover for such injuries or death shall operate as a forfeiture of the right to benefit under this Act.

Section 12. Violations of Provisions of Act—Penalties. A manager, agent, foreman, accountant, person or persons who represent any corporation, partnership, association, person or persons, engaged in the mining or managing of any coal mines or coal washers in Montana, or person or persons liable for the payments herein provided for who shall violate the intent of this Act by inaccurate reports of tonnage of coal produced by them, or the earnings of employees in their employ or who in any manner hinders or obstructs the Auditor of State in ascertaining facts bearing upon any case provided for in this Act or who may refuse correctly to make out such reports as are required by this Act, or as requested by the Auditor of State, or submit to its provisions, when liable therefor, or who shall fraudulently obtain benefits hereunder shall be fined for each offense the sum of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars and imprisonment in the County jail

for a period of not less than one month nor more than six months, or by both such fine and imprisonment. The proceeds of all fines shall be forwarded to the State Treasurer and by him credited to the Insurance Fund.

Section 13. Act Takes Effect—When. This Act to be in full force and effect from and after the first day of October nineteen hundred and ten, benefits to commence four months thereafter. (Approved March 4, 1909.)

DIVISION III.

LAWS APPLICABLE TO BOTH QUARTZ AND COAL MINING.

(Article V, Part III, Title VII, Chapter II, Revised Codes.)

Chapter 1.

Hours and Regulation of Labor.

- Section 1734. Hours of Labor, Hoisting Engineers.
- 1735. Penalties.
- 1736. Hours of Labor, Underground Mines.
- 1737. Same, Smeltermen.
- 1738. Penalty.
- 1789. Hours of Labor—Municipalities—Mines—Mill and Smelters.
- 1740. Penalty.

Constitution.

Article XVIII, Section 4. A period of eight hours shall constitute a day's work on all works or undertakings carried on or aided by any municipal, county or state government, and on all contracts let by them, and in mills and smelters for the treatment of ores, and in underground mines.

(Revised Codes.)

Section 1734. Hours of Labor—Hoisting Engines. That on and after the first day of May, A. D., 1903, it shall be unlawful for any person or persons, company or corporation, to operate or handle, or to induce, persuade or prevail upon any person or persons to operate or handle, for more than eight hours in twenty-four hours of each day, any hoisting engine at or in any mine. This Act shall apply only to such plants as are in continuous operation or are operated sixteen or more hours in twenty-four hours of each day, or at or in any mine where said hoisting engine develops fifteen or more horse power, or at or in any

mine wherein there are fifteen or more men employed underground in twenty-four hours of each day. Provided, however, that the provisions of this Act shall not apply to any person or persons operating any hoisting engine more than eight hours in each twenty-four hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes. (Laws of 1903, Chapter 53.)

Section 1735. **Penalties.** Any person or persons, company or corporation, who shall violate any of the provisions of this Act, shall, upon conviction, be punished by a fine of not less than ten (\$10.00) dollars, nor more than one hundred (\$100.00) dollars; and each and every day that such person or persons, company or corporation may continue to violate any of the provisions of this Act shall be considered a separate and distinct offense and shall be punishable as such. (Laws of 1903, Chapter 53.)

Section 1736. **Hours of Labor—Underground Miners.** The period of employment of working men in all underground mines or workings, shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger. (Laws of 1901, page 62.)

Section 1737. **Same—Smeltermen.** The period of employment of working men in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores, and refining of ores or metals, shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger. (Laws of 1901, page 63.)

Section 1738. **Penalty.** Any person or persons, body corporate, agent, manager or employer who shall violate any of the provisions of Sections 1736 or 1737 of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be subject to a fine of not less than One Hundred Dollars or more than Five Hundred Dollars, or by imprisonment in the county jail for a period of not less than one (1) month, or more than six (6) months or by both such fine and imprisonment. (Laws of 1901, page 63).

Section 1739. **Hours of Labor for Municipalities, Mines, Mills and Smelters.** A period of eight (8) hours shall constitute a day's work on all works or undertakings carried on or aided by any Municipal, County, or State Government, and on all con-

tracts let by them, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing or treatment of coal. (Laws of 1907, Chapter 108.)

Section 1740. **Penalties.** Every person, corporation, stock company or association of persons who violate any of the provisions of Section 1739 of this Act shall be guilty of a Misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred (100) Dollars nor more than Five Hundred (\$500) Dollars, or by imprisonment in the county jail for not less than Thirty Days nor more than Six Months, or by both such fine and imprisonment. (Laws of 1907, Chapter 108.)

Chapter 2.

Prohibitions Against Child Labor.

(Article IV., Part III., Title VII., Chapter II., Revised Codes.)

Section 1746. **Employment of Children Under Sixteen Years in Certain Occupations Prohibited.**

1747. Liability of Parent.

1748. Record of Children Under Sixteen Years of Age.

1749. Age Certificate.

1750. Enforcement of Act.

1751. Penalties.

1752. Prohibiting Employment of Children in Mines.

1753. Permitting Employment—Misdemeanor.

1754. Penalties.

Constitution.

Article XVIII., Section 3: It shall be unlawful to employ children under the age of sixteen (16) years of age in underground mines.

(Revised Codes.)

Section 1746. **Employment of Children in Certain Occupations Prohibited.** Any person, company, firm, association, or corporation engaged in business in this State, or any agent, officer, foreman or other employee having control or management of employees or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed air railroad,

or passenger or freight elevator or where any machinery is operated, or for any telegraph, telephone or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided. (Laws of 1907, Chapter 99.)

Section 1747. Liability of Parent. Any parent, guardian or other person having the care, custody or control of any child under the age of sixteen years, who shall permit suffer or allow any such child to work or perform service for any person, company, firm, association or corporation doing business in this State, or who shall permit or allow any such child over whom he has such care, custody or control, to retain such employment as is prohibited in Section 1746 of this Act, whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided. (Laws of 1907, Chapter 99.)

Section 1748. Record of Children Under Age of Sixteen Years. The Commissioner of the Bureau of Agriculture, Labor and Industry shall compile and preserve in his office from reports made to him by the County Superintendent of Schools, as otherwise provided, a full and complete list of the name, age, date of birth and sex of each child, and the names of the parents or guardians of each child under the age of sixteen years who is now or may hereafter become a resident of this State,, and such list shall be the official record of the age of children in this State. (Laws of 1907, Chapter 99.)

Section 1749. Age Certificate. Upon attaining the age of sixteen years any child may make application to the Commissioner of the Bureau of Agriculture, Labor and Industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer if such employment be given, must countersign the certificate, and return the same to the commissioner of said bureau who shall keep the same on file in his office. Any person, firm, company, association or corporation who employs or permits to be employed in any occupation prohibited in Section 1746 of this Act, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor

and punishable as hereinafter provided, should such child prove less than 16 years of age. (Laws of 1907, Chapter 99.)

Section 1750. Enforcement of Act. To enforce this act the Commissioner of the Bureau of Agriculture, Labor and Industry, the Bureau of Child and Animal Protection and all county attorneys shall, each upon their own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations. (Laws of 1907, Chapter 99.)

Section 1751. Penalties. Every person, firm, company, association or corporation who violates any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-Five Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment. (Laws of 1907, Chapter 99.)

Section 1752. Prohibiting Employment of Children in Mines. Any person, corporation, stock company or association of persons, owning or operating any underground mine, or any officer, agent, foreman or boss, having the control or management of employees, or having the power to hire or discharge employees, who shall employ, or knowingly permit to be employed any child under the age of sixteen years, for work or service in any such mine, or the underground workings thereof, or permit or allow any such child to render or perform any work or service whatever in such mine, whether under contract of employment or otherwise, shall be guilty of a misdemeanor and punishable as hereinafter provided. (Laws of 1905, Chapter 16.)

Section 1753. Permitting Employment—Misdemeanor. Any parent, guardian or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow such child to work in any mine having underground workings, or who shall permit or allow any such child over whom they may have such care, custody or control to retain employment in any such mine, or who, after having knowledge that any such child has taken employment in any such mine, or is performing work or service therein, whether under contract of employment or not, shall fail forthwith to notify the person or corporation owning or operating such mine, or some

officer, foreman or employee thereof having the power to hire or discharge employees, of the age of such child, shall be guilty of a misdemeanor and punishable as hereinafter provided. (Laws of 1905, Chapter 16.)

Section 1754. **Penalties.** Any person or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than Twenty-five Dollars (\$25) nor more than Five Hundred \$(500) Dollars, or by imprisonment in the County Jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment. (Laws of 1905, Chapter 16.)

Chapter 3.

Personal Injuries—Obligations of Employer.

(Article II., Division III., Part IV., Title VI., Chapter I.,
(Revised Codes.)

Section 5246. **Mines, Mills, and Smelters—Vice Principals.**

5247. **Contract of Insurance not to Release Employers.**

5248. **Mining Companies Liable for Negligence of Certain Employees.**

5249. **Contract of Insurance no Bar to Recovery.**

5250. **Survival of Action.**

Section 5246. **Mines, Mills and Smelters—Vice Principals.** That every company, corporation, or individual operating any mine, smelter or mill for the refining of ores shall be liable for all damages sustained by an employee thereof within this State, without contributing negligence on his part when such damage is caused by the negligence of any superintendent, foreman, shift-boss, hoisting or other engineer, or crane-men. (Laws of 1903, Chapter 83.)

Section 5247. **Contract of Insurance not to Release Employer.** No contract of insurance, relief, benefit, or indemnity in case of injury or death, nor any other contract entered into either before or after the injury, between the person injured and any of the employers named in this Act shall constitute any bar or defense to any cause of action brought under the provisions of this Act. (Laws of 1903, Chapter 83.)

Section 5248. **Mining Companies Liable for Negligence of Certain Employees.** That every company, corporation, or indi-

vidual operating any mine, smelter or mill for the refining of ores shall be liable for any damages sustained by any employees thereof within this state, without contributing negligence on his part, when such damage is caused by the negligence of any superintendent, foreman, shift-boss, hoisting, or other engineer, ore crane men. (Laws of 1905, Chapter 23.)

Section 5249. **Contract of Insurance no Bar to Recovery.** No contract of insurance, relief, benefit, or indemnity in case of injury or death, nor any other contract entered into before the injury, between the persons injured and any of the employers named in this Act shall constitute any bar or defense to any cause of action brought under the provisions of this Act. (Laws of 1905, Chapter 23.)

Section 5250. **Survival of Action.** In case of the death of any such employees in consequence of any injury or damages so sustained, the right of action shall survive and may be prosecuted and maintained by its heirs, or personal representatives. (Laws of 1905, Chapter 23.)

Chapter 4.

Extortion by Foremen, Etc.

(Part I., Title XIII., Chapter VII., Revised Codes.)

Section 8678. Receipt or Solicitation of Gifts, by Foremen From Employees.

8679. Immunity of Witnesses.

Section 8678. **Receipt or Solicitation of Gifts, by Foremen From Employees.** That any superintendent, foreman, assistant boss, or any other person or persons, who shall receive, or solicit, or cause to be received or solicited, any sum of money or other valuable consideration, from any person for or on account of the employment, or the continuing of the employment of such person, or of any one else, or for, or on account of any promise, or agreement, to employ or to continue to employ, any such person, or any one else, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand (\$1,000) dollars, or undergo an imprisonment in the county jail of not more than one (1) year, or both, at the discretion of the court. (Laws of 1907, Chapter 52.)

Section 8679. **Immunity of Witnesses.** No person shall be excused from attending or testifying, or producing any books,

papers, documents, or any thing, or things before any court, or magistrate upon any investigation, proceeding, or trial, for a violation of any of the provisions of this Act, upon the ground, or for the reason that the testimony, or evidence, documentary, or otherwise required of him, may tend to convict him of a crime, or to subject him to a penalty, or forfeiture; but no person shall be prosecuted or subjected to any penalty, or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence of documentary or otherwise; and no testimony or evidence so given, or produced shall be received against him in any civil or criminal proceeding, action or investigation. (Laws of 1907, Chapter 52.)

Chapter 5.

Company Store Act.

(Part III., Title VII., Chapter II., Article V., Revised Codes.)

Section 1744. Labor—Payment—What Illegal.

1745. Violation of Act—Penalty.

Section 1744. **Labor—Payment in Script Prohibited.** It shall be unlawful for any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, to sell, give, deliver or in any way directly or indirectly, to any employed by him, or it in payment of wages due or to become due, any script, token, check, draft, order, credit, or any book of account or other evidence of indebtedness payable to bearer or to his assignees, except as hereinafter provided, but such wages shall be paid only in lawful money of the United States, or by check or draft drawn upon some bank in which such person, firm, company, corporation or trust, or the agent or business manager of such person, firm, company, corporation, or trust, has money upon deposit to cash the same, and no assignment of any wages due or to become due to any employee, shall be made to any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, or to any one interested directly or indirectly, in any firm, company, corporation or trust employing said laborer. And any contract to the contrary shall be void; provided, however, this shall not prevent ranchmen, farmers, lumber camps, or mining camps from supplying their employees or pay-

ing said employees in other than cash or check where there is no bank or other store than that owned by said employers at which said employees may purchase supplies, or cash their bankable checks received for their labor. (Laws of 1901, page 147.)

Section 1745. **Violation of Act—Penalty.** Every person, company, corporation or trust or agent or business manager of such firm, company, corporation or trust who violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than One Hundred (\$100.00) Dollars, or more than Five Hundred \$500.00) Dollars or by imprisonment in the county jail of not less than one month or more than six months, or by both such fine and imprisonment. (Laws of 1901, page 147.)

DIVISION IV.

MISCELLANEOUS PROVISIONS.

Chapter 1.

Location of Quartz Lode Mining Claims.

(Revised Codes.)

- Section 2283. Discovery, Notice, Marking Boundaries, Sinking Shaft.
- 2284. Record of Certificate of Location.
- 2285. Mill Sites.
- 2286. Relocation of Abandoned Claims.
- 2287. Rights of Relocator.
- 2288. Amended Location.
- 2289. Relocation by Owner.
- 2290. Amendment or Relocation not a Waiver of Acquired Rights.
- 2291. Rights of Third Persons not Affected.
- 2292. Validating Location Heretofore Made.
- 2293. Defective Locations Good Against Persons With Notice.
- 2294. Effect of Patent.
- 2295. Amended Locations.
- 2296. Effect of Amended or Additional Declaratory Statement.
—Record.
- 3613. (Political Code, 1895). Placer Locations Heretofore Made,
Effect of.
- 3614. (Political Code, 1895). Annual Work—Affidavit—Contents
—Record.
- 3616. (Political Code, 1895). Official Survey—Certificate—Part
of Declaratory Statement.

Section 2283. **Discovery—Notice—Marking Boundaries—Sinking Shaft.** Any person who discovers, upon the public

domain of the United States, within the State of Montana, a vein, lode or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge or deposit, in the following manner, viz:

I. He shall post, conspicuously, at the point of discovery a written or printed notice of location, containing the name of the claim, the name of the locator, (or locators, if there be more than one,) the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

II. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its boundaries can be readily traced. It shall be prima facie evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides. (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump, of the requisite size, surrounded by such mound shall be deemed the equivalent of a post and mound. (3) A Stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone along side at least four feet in diameter by two feet in height, or (4) a boulder at least three feet above the natural surface of the ground on the upper side.

Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

III. Within sixty days after posting such notice, he shall sink a shaft upon the vein, lode or deposit, at or near the point of discovery, to be known as the discovery shaft. Such shaft shall be sunk to the depth of at least ten feet, vertically, below the lowest part of the rim of such shaft at the surface, or deeper if necessary to disclose the vein or deposit located, and the cubical contents of such shaft shall be not less than one hundred and fifty cubic feet; provided, that any cut or tunnel which discloses the vein, lode or deposit located at a vertical depth of at least ten feet below the natural surface of the ground and which constitutes at least one hundred and fifty cubic feet of excavation, shall be deemed the equivalent of such shaft, and, provided also, that, where the vein, lode or deposit located is disclosed at a less vertical depth than ten feet, any deficiency in the depth of the discovery shaft, cut or tunnel may be compensated for by any horizontal extension of such working, or by any excavation done, elsewhere upon the claim, equalling, in cubical contents, the cubical extent of such deficiency; but in every case at least 75 cubic feet of excavation shall be made at the point of discovery. (Laws of 1907, Chapter 16.)

Section 2284. **Record of Certificate of Location.** Within sixty days after posting the notice of location and for the purpose of constituting constructive notice of the location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated. Such record shall consist of a certificate of location containing:

I. The name of the lode or claim.

II. The name of the locator or locators, if there be more than one.

III. The date of location, and such description of said claim, with reference to some natural object or permanent monument, as will identify the claim.

IV. In the case of a lode claim, the direction and distance claimed along the course of the vein each way from the discovery shaft, cut or tunnel, with the width claimed on each side of the center of the vein.

V. In the case of a placer claim, the dimensions or area of the claim, and the location thereon on the discovery shaft, cut or tunnel.

VI. The locator and claimant, at his option, may also set

forth, in such certificate of location, a description of the discovery work, the corner monuments and the markings thereon, and any other facts showing a compliance with the provisions of this law.

Such certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators, if there be more than one, or by authorized agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an Agent, the fact of the agency shall be stated in the affidavit.

A certificate of location so verified, or a certified copy thereof, is prima facie evidence of all facts properly recited therein. (Laws of 1907, Chapter 16.)

Section 2285. Mill Sites. Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant. (Laws of 1907, Chapter 16.)

Section 2286. Re-location of Abandoned Claim. The re-locator of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working, existing upon such claim at the date of the re-location, in which the vein, lode or deposit is disclosed, but, in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location. (Laws of 1907, Chapter 16.)

Section 2287. Rights of Re-locator. The rights of a re-locator of any abandoned or forfeited mining claim, hereafter re-located, shall date from the posting of his notice of location thereon, and, while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any re-entry or resumption of work by the former locator or claimant. (Laws of 1907, Chapter 16.)

Section 2288. Amended Location. A locator or claimant may, at any time, amend his location and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground, and filing an amended certificate

of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate. (Laws of 1907, Chapter 16.)

Section 2289. **Re-location by Owner.** A locator or claimant may at any time, re-locate his own claim for any purpose, except to avoid the performance of annual labor thereof, and, by such re-location, may change the boundaries of his claim, or the point of discovery, or both, but such re-location must comply in all respects, with the requirements of this law as to an original location. (Laws of 1907, Chapter 16.)

Section 2290. **Amendment or Re-location Not a Waiver of Acquired Rights.** Where a locator or claimant amends or re-locates his own claim, such amendment or re-location shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or re-located. As to the portion of ground included both in the original location and the location as amended or re-located, he may rely either upon the original location or the location as amended or re-located, or upon both. Provided, that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery. (Laws of 1907, Chapter 16.)

Section 2291. **Rights of Third Persons not Affected.** No amendment or re-location of a mining claim by the locator or claimant thereof shall interfere with the right of any third person existing at the time of such amendment or re-location. (Laws of 1907, Chapter 16.)

Section 2292. **Validating Locations Heretofore Made.** All mining locations, made and recorded under the laws of this state, heretofore in force, that in any respect have failed to conform to the requirements of such laws, shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this Act, be valid if the making and recording of such locations conform to the requirements of this Act. (Laws of 1907, Chapter 16.)

Section 2293. **Defective Locations Good Against Persons With Notice.** The period of time, prescribed by this law for the

performance of any act, shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground, or some portion thereof, in good faith and without notice. Notice to an agent, who makes a location in behalf of another, shall be deemed notice to his principal, and notice to one of several co-claimants shall be deemed notice to all. (Laws of 1907, Chapter 16.)

Section 2294. **Effect of Patent.** The issuance of a United States Patent for a mining claim shall be deemed conclusive that the requirements of the laws of this state relative to the location and record of such mining claim, have been duly complied with; provided, however, that where questions of priority are involved the date of the location shall be an issuable fact where it is claimed to have been prior to the date of the record of the location. (Laws of 1907, Chapter 16.)

Section 2295. **Amended Locations.** If at any time the locator of any mining claim heretofore or hereafter located, or his successors or assigns, shall apprehend that his original declaratory statement was defective or erroneous, or that the requirements of law had not been complied with, or shall be desirous of changing his boundaries, or taking in any part of an overlapping claim which has been abandoned, or in case his original declaratory statement was filed prior to the passage of this law, and he shall be desirous of securing the benefit of this Act, such locator, or his successors or assigns, may file an additional or amended declaratory statement, subject to the provisions of this Act; provided that such re-location or filing of the amended or additional declaratory statement shall not interfere with the existing rights of others at the time of such re-location or filing of the amended or additional declaratory statement, and no such re-location or amended or additional declaratory statement, or other record thereof, shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof. (Laws of 1901, pages 56, 57.)

Section 2296. **Effect of Amended or Additional Declaratory Statement.** Any amended or additional declaratory statement which may have heretofore been filed by a locator, or his suc-

cessors or assigns, shall have the same force and effect and be subject to the same terms and conditions as though the same had been filed under the provisions of Section One of this Act. (Laws of 1901, page 57.)

(Political Code of 1895.)

Section 3613. Placer Locations Heretofore Made—Effect of. All placer mining locations or locations of valuable mineral deposits, which have heretofore been recorded in the office of the County Clerk or Recorder, have the same force and effect as though such records had been authorized by law, except in cases where the rights of third persons had been acquired before the passage of this Code; and such record is entitled to be admitted in evidence in any court.

(Political Code of 1895.)

Section 3614. Annual Work—Affidavit—Contents—Record. The owner of a lode or placer claim who performs or causes to be performed the annual work or makes the improvements required by the laws of the United States in order to prevent the forfeiture of the claim, may, within twenty days after the annual work, file in the office of the County Clerk of the county in which such claim is situated an affidavit of his own, or an affidavit of person who performed such work or made the improvements, showing:

1. The name of the claim and where situated.
2. The number of days' work done, and the character and value of the improvements placed thereon.
3. The dates of performing such work and of making the improvements.
4. At whose instance the work was done or the improvements made.
5. The actual amount paid for work and improvements, by whom paid, when the same was not done by the owner.

Such affidavits, or a certified copy thereof are prima facie evidence of the facts therein stated.

(Political Code of 1895.)

Section 3616. Official Survey—Certificate—Part of Declaratory Statement. Where a locator or owner of a mining claim has the boundaries and corners of his claim established by a United States Deputy Mineral Surveyor, and his claim connected with a corner of the public or minor surveys, or an estab-

lished initial point, and incorporates into the declaratory statement the field notes of such survey, and attaches to and files with such declaratory statement, a certificate by the surveyor setting forth:

1. That such survey was actually made by him, giving the date thereof.
2. The names of the claim surveyed and the locators thereof.
3. That the description incorporated in the declaratory statement is sufficient to identify the claim.

Such survey and certificate becomes a part of the declaratory statement and such declaratory statement is prima facie evidence of the facts therein contained.

(The last three sections above have not been repealed, but are inadvertently omitted from the Revised Codes of 1907.)

Chapter 2.

STATE LANDS.

Disposition of Mineral Lands.

(Laws of 1909, Chapter 147, p. 289.)

(Provisions Relating to Other Than Coal or Mineral Lands
Omitted.)

CHAPTER 147.

An Act providing for the Management and Control of the Lands now owned by or hereafter to be Acquired by the State of Montana, including the Sale and Rental thereof, and the Management, Protection, and Disposition of the Timber Growing thereon and the Coal, Oil, and Minerals therein;
* * * and Defining and Providing for the punishment of Certain Offenses for Violating the Provisions of this Act.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 28. Coal Lands—What Deemed—Selection. All coal areas in the state after final examination are defined by the United States Geological Survey, or other authority under the Government of the United States, shall be recognized by the authorities of this state as coal lands, until otherwise determined; and no such lands shall be sold, but such lands may be leased by the state to any person or persons, company or corporation but only on a royalty basis as herein provided; provided, however, that the surface rights of such land may be sold or may be leased

for either agricultural or grazing purposes, but any other state lands may be designated as coal lands by the State Board of Land Commissioners, and withdrawn from sale when, in the opinion of the board, such lands contain coal.

Section 34. Sale of State Lands—Reservation of Coal, Oil and Gas. The State Board of Land Commissioners may direct the sale of any state lands, except as provided in this act, * * * and, provided, further, that all leases and conveyances of state lands by the State Board of Land Commissioners shall contain a reservation to the state of all coal, oil and gas contained therein.

Section 70. Rental of Coal Lands. Any person, association, co-partnership or corporation, leasing and operating coal land under the provisions of this Act, shall pay to the State the minimum price of not less than ten (10) cents per ton, for each and every ton of merchantable coal so mined from said land, to be paid monthly on or before the 25th day of each month, for the coal mined during the preceding calendar month. Should the lessee of such coal land fail to mine during any one year the minimum amount that may be provided for in the term of the lease, he shall, notwithstanding such failure, pay to the state the minimum rental provided for in said lease. Should any person apply to lease any of the coal lands belonging to the State, upon which there are surface or underground improvements placed or made by a former lessee, before a lease shall issue, said applicant shall file in the office of the Register a receipt showing that the price of said improvements, as agreed upon by the parties, or fixed by the State Land Agent, or one of his assistants, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of such surface or underground improvements so agreed upon or fixed; or proof that the owner of such improvements elects to remove them.

Section 71. Location of Mining Claims on State Lands. Locations of mining claims not exceeding six hundred (600) feet in width and fifteen hundred (1500) feet in length, each, may be made upon lands belonging to the State as follows: The discoverer of a body of mineral in either a vein, lode, or ledge, or mineral in a placer deposit shall immediately post conspicuously a notice that he has made such a discovery, on the date stated in

such notice, and shall complete such location in all respects as prescribed by the laws of this State for the location of mining claims upon the public lands of the United States, except that no notice of such location need be recorded in the office of the County Clerk, but such notice shall be filed with the Register of State Lands. Such procedure shall empower the locator to retain possession of and operate said claim for the period of one year, at the end of which time, he shall be required to purchase said claim ten dollars per acre or take a lease thereof at such price, or upon such terms as may be agreed upon between him and the State Board of Land Commissioners.

Section 72. Proof of Mineral Character of Land. Before the locator will be allowed to purchase the claim located by him, satisfactory proof at a hearing, if deemed necessary, must be submitted to the State Board of Land Commissioners, that such claim is more valuable for mineral purposes than for any other purpose, and that the same contains a body of mineral in place, or a placer deposit, of sufficient value to justify the operation of the same as a present fact; provided, that no mining claim shall be located upon any coal or oil lands; and, provided, further, that all hearings under the provisions of this section shall be had before the contest board with like procedure as other contested cases; and provided, further, that no lands classified under subdivision four of the classification in the constitution shall be sold as mineral lands, but the mineral therein may be sold separately from the surface.

Section 73. Lands Valuable for Stone. Whenever it shall appear to the State Board of Land Commissioners that there is a deposit of stone valuable for building, mining, or other commercial purposes upon any section or subdivision of State Land, the board shall not lease the same for any purpose except for the extraction and working of the stone and then upon a royalty basis only, upon such terms as the board shall prescribe. The board may lease the remainder of the section or subdivision for agriculture, grazing, or other purposes, as may appear for the best interests of the state, as other state lands are leased; but shall provide in all such cases for a right of way across said state land or any adjoining state land for all purposes connected with the working and disposition of the stone.

Chapter 3.

Acquisition of Water Rights.

(Title VII., Division II., Part IV., Revised Codes.)

- Section 4840. What Waters May be Appropriated.
4841. Appropriation to be for Useful Purpose.
4842. Point of Diversion May be Changed.
4843. Water turned Into Natural Channel May be Reclaimed.
4844. Return of Surplus Water to Stream.
4845. First in Time, First in Right.
4847. Notice of Appropriation.
4848. Diligence in Appropriating.
4849. Effect of Failure to Comply With Provisions.
4850. Record of Declaration.
4851. Record Prima Facie Evidence.
4852. Rights Settled in One Action.
4853. Record of Declaration Notices.
4854. Measurement of Water—Cubic Foot.
4855. Miners' Inch—Equivalent in Gallons.
4856. Act not to Affect Existing Decrees.
4857. Right to Construct Dams.
4858. Highways to be Protected.
4859. Penalty for Violating Preceding Section.
4860. Owners of Water May Sell Surplus.
4861. Duty of Purchaser to Dig Ditches.
4862. Enforcement of Right to Surplus.
4863. Purchaser Cannot Sell.
4864. Dam or Reservoir to be Securely Constructed.
4865. No Person to Use Insecure Reservoir.
4866. Surveys of Ditches—Filing Map.
4867. Effect of Decree upon Subsequent Appropriators.
4868. Appropriations Subject to Prior Decrees.
4869. Non-adjudicated Streams not Affected by Act.
4870. Appropriations Pending Litigation Subject to Decree.
4871. Appropriation From Adjudicated Stream—Notice.
4872. Application Filed With Clerk of District Court.
4873. Duties of Court.
4874. Deposit for Expenses.
4875. Payment of Expenses.
4876. Record of Survey.
4877. Statutory Measurements.
4878. Penalty.
4879. Effect of Decree.
4884. Appointment of Water Commissioner.
4887. Objections to Commissioner's Award.
4888. Record of Commissioner—Expenditures.
4889. Fees and Compensation.
4890. Users Must Maintain Head Gates etc.

Section 4840. **What Waters May be Appropriated.** The right to the use of any unappropriated water of any natural stream, water course, spring, dry coulee, or other natural source of supply, and of any running water flowing in the streams, rivers, canyons and ravines of this state, may hereafter be acquired by appropriation. (Laws of 1901, page 152.)

Section 4841. **Appropriation to be for Useful Purpose.** The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact and shall be determined as other questions of fact.

Section 4842. **Point of Diversion May be Changed.** The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Section 4843. **Water Turned Into Natural Channel May be Reclaimed.** The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed, but, in reclaiming it, water already appropriated by another must not be diminished in quantity, or deteriorated in quality.

Section 4844. **Return of Surplus Water to Streams.** In all cases where by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream, and there shall, at any time, be a surplus of water so diverted, over and above what is actually and necessarily used by the prior appropriator, such person shall be required to turn and cause to flow back into the stream, such surplus water, and upon failure so to do, within twenty-four hours after demand being made upon him in writing to him in person or at his place of abode, by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved for the damage resulting therefrom, in such sum as may be determined by court.

(Laws of 1907, Chapter 56.)

Section 4845. **First in Time, First in Right.** As between appropriators the one first in time is first in right.

Section 4847. **Notice of Appropriation.** Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

1. The number of inches claimed, measured as hereinafter provided.
2. The purpose for which it is claimed and place of intended use.
3. The means of diversion, with size of flume, ditch, pipe, or aqueduct by which he intends to divert it.
4. The date of appropriation.
5. The name of the appropriator.

Within twenty days after the date of appropriation the appropriator shall file with the County Clerk of the County in which such appropriation is made a notice of appropriation, which in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream, with reference to some natural object or permanent monument. The notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

Section 4848. **Diligence in Appropriating.** Within Forty Days after posting such notice the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when constructed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this Title.

Section. 4849. **Effect of Failure to Comply With Provisions.** A failure to comply with the provisions of this Title deprives the appropriator of the right to the use of water as against a subse-

quent claimant who complies therewith, but by complying with the provisions of this Title, the right to the use of the water shall relate back to the date of posting the notice.

Section 4850. **Record of Declaration.** Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this title, file in the office of the County Clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this Title, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in Section 4847 of this title and verified as required in said last mentioned section in cases of notice of appropriation of water; Provided, that a failure to comply with the requirements of this section shall in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts.

Section 4851. **Record Prima Facie Evidence.** The record provided for in Sections 4847 and 4850, of this Title, when duly made, shall be taken and received in all courts of this State as prima facie evidence of the statements therein contained.

Section 4852. **Rights Settled in One Action.** In any action hereafter commenced for the protection of rights acquired to water under the laws of this State, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one judgment settle the relative priorities and rights of all the parties to such action. When damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdicts, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves.

In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same kind is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

Section 4853. **Record of Declaration Notices.** The County Clerk must keep a well bound book, in which he must record the notices and declarations provided for in this Title, and he shall be entitled to have and receive the same fees as are now or here-

after may be allowed by law for recording instruments entitled to be recorded.

Section 4854. Measurement of Water—Cubic Foot. Hereafter a cubic foot of water (7.48 gallons) per second of time shall be the legal standard for the measurement of water in this State. (Laws of 1899, page 126.)

Section 4855. Miners' Inch—Equivalent in Gallons. Where water rights expressed in miners' inches have been granted, one hundred miners' inches shall be considered equivalent to a flow of two and one-half cubic feet (18.7 gallons) per second; two hundred miners' inches shall be considered equivalent to flow of five cubic feet (37.4 gallons) per second, and this proportion shall be observed in determining the equivalent flow represented by any number of miners' inches. (Laws of 1899, page 126.)

Section 4856. Act Not to Affect Existing Decrees. Provided, that the provisions of this bill shall not affect or change the measurement of water heretofore decreed by a Court, but such decreed water shall be measured according to the law in force at the time such decree was made and entered. (Laws of 1899, page 126.)

Section 4857. Right to Construct Dams. The right to conduct water from or over the land of another for any beneficial use, includes the right to raise any water by means of dams, reservoirs or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor, may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use;

PROVIDED, FURTHER, that if it is necessary to conduct the water across the right of way of any railroad, it shall be the duty of the owners of the ditch or flume to give thirty days' notice in writing to the owner or owners of such railway of their intention to construct a ditch or flume across the right of way of such railroad and the point at which the said ditch or flume will cross the railroad; also the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad or their agent fails to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said flume or ditch to construct the same across the right of way of such railroad, without further notice to said

owner or owners of the railroad. (Act approved March 18, 1895.)

Section 4858. Highways to be Protected. Any person who digs and constructs ditches, dykes, flumes or canals, over or across any public roads or highways, or who uses the waters of such ditches, dykes, flumes or canals, is required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes or canals may flow over, or in any wise injure any roads or highways, either by bridging or otherwise.

Section 4859. Penalty for Violating Preceding Section. Any person offending against the preceding section, on conviction thereof, shall pay for every offense a fine of not less than twenty-five dollars, nor more than one hundred dollars, with cost of prosecution. One-half of the fine shall be paid into the County Treasury for the benefit of the common schools of the county in which the offense was committed and the other half shall be paid to the person informing the nearest magistrate that such offense has been committed, who shall issue a warrant upon proper complaint being made.

Section 4860. Owners of Water May Sell Surplus. Any person having the right to use, sell or dispose of water, and engage in using, selling or disposing of the same, who has a surplus of water, not used, or sold, or any person having a surplus of water, and the right to sell and dispose of the same, is required upon the payment or tender to the person entitled thereto an amount equal to the usual and customary rates per inch, to convey and deliver to the person such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water exists and said payment or tender be made as aforesaid.

Section 4861. Duty of Purchaser to Dig Ditches. Any person desiring to avail himself of the provisions of the preceding section must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him, and pay or tender to the person having the right to the use, sale or disposal thereof, an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume or aqueduct, and putting in gates, gauges

or other proper and necessary appliances usual and customary in such cases, and until the same shall be done, the delivery of the said surplus water shall not be required as provided in the preceding section.

Section 4862. Enforcement of Right to Surplus. Any person constructing the necessary ditches, aqueducts or flumes, and making the payments or tenders hereinbefore provided, is entitled to the use of so much of the said surplus water as said ditches, flumes or aqueducts have the capacity to carry, and for which payment or tender is made, and may institute, and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Section 4863. Purchaser Cannot Sell. Nothing in the three preceding sections shall be so construed as to give the person acquiring the right to the use of water as therein provided, the right to sell or dispose of the same after being so used by him, or prevent the original owner or proprietor from retaking, selling and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

Section 4864. Dam or Reservoirs to be Securely Constructed. No person shall hereafter fill, or procure to be filled with water, any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the water to be turned therein.

Section 4865. No Person to Use Insecure Reservoir. No person shall hereafter construct, or cause to be constructed, on a stream, any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

Section 4866. Surveys of Ditches—Filing Map. Any person availing himself of the provisions of the preceding Sections, and who shall have complied with said preceding Sections relating to the appropriation of water, may, within six months after his ditch is completed, publish a notice once a week for two successive weeks, in a newspaper designated by the County Commissioners as the official paper of the County, stating that he will, on a date to be therein mentioned which date shall be not less than twenty nor more than thirty days after the first publication of said notice, cause said ditch to be surveyed by a competent Civil Engineer, whose name shall be given, and stating the

name of stream, and such a general description as will identify the ditch. It shall be the duty of said person to employ a competent civil engineer to make such survey, and it shall be the duty of such civil engineer to survey said ditch, ascertain its grade, measure the headgate thereof, and measure said ditch in such other places as may be necessary to show its carrying capacity, and also measure the land irrigated by said ditch, or proposed to be irrigated thereby, and to make a map showing the general courses of the ditch and the land irrigated or proposed to be irrigated therefrom, giving the grade and the dimensions of the head gate and other dimensions of the ditch where measured, and attach thereto his affidavit showing the date when he commenced the survey of said ditch, the date when completed, the names of the persons who assisted him, and that said map and the date given thereon are correct.

If for any reason the survey cannot be made upon the day designated in the notice, it may be made on any subsequent day, and the person who caused said survey to be made shall file an affidavit showing why the survey was not made on the day mentioned in the notice; Provided, however, that if any person appears upon the ground at the time mentioned in the notice and serves a written notice that he desires to be present when said survey is made, the person who caused said ditch to be made shall give such person at least three days' written notice of the time when said ditch shall be surveyed. The said survey of said ditch may be continued from day to day, or from time to time, as may be necessary to complete it, and any person shall have the right to be present at said survey. The map made by the surveyor, his affidavit, and the affidavit of publication of the notice aforesaid, shall within thirty days from the completion of said survey, be held in the office of the Clerk and Recorder of the county wherein the notice of appropriation is filed, and such affidavit and map, or certified copies thereof, shall be prima facie evidence of the facts therein shown and stated in all courts in this State in actions relating to the said ditch and water right. (Laws of 1905, Chapter 95.)

Section 4867. Effect of Decree upon Subsequent Appropriations. Whenever there shall have been an adjudication of the rights between appropriators or claimants, any stream or any other water supply in this State, in any District Court of the

State, or the United States Court, in an action prosecuted in good faith between such appropriators, or claimants, to determine their respective rights to the use of such waters, and which decree is based upon evidence introduced and not upon stipulations or admissions of the parties, such adjudication and decree, or certified copies thereof, shall, as against all persons, appropriating or diverting any of the waters of the said stream, or other water supply after the date of such decree, in an action relating to such waters, be prima facie evidence of the facts therein found, determined and decreed, respecting the rights of parties to said action to the use of the waters of said stream, or other water supply. (Laws of 1905, Chapter 95.)

Section 4868. Appropriations of Water Subject to Prior Decrees. All water hereafter appropriated by any person, association, company, or corporation after the passage of this Act, from any stream, creek, spring, canyon, river or ravine in this State, in which the water rights therein have been adjudicated and decreed prior to the passage of this Act, and a decree of a Court of Competent Jurisdiction entered therein, shall be subject to such decree. (Laws of 1907, Chapter 185.)

Section 4869. Non-adjudicated Streams not Affected by Act. In all streams, creeks, springs, canyons, rivers and ravines, in which the water rights therein have not been adjudicated by a Court of Competent Jurisdiction, water shall be appropriated in the same manner as provided by law, at the time of the passage of this Act. (Laws of 1907, Chapter 185.)

Section 4870. Appropriations Pending Litigation Subject to Decree. At such time as there may be legal proceedings instituted by the owner or owners of any water right or water rights in any stream, spring, creek, canyon, river or ravine, before any Court of Competent Jurisdiction, all subsequent appropriations made in any such streams, creeks, springs, canyons, rivers or ravines will be subject to such suit as may be instituted and shall not date prior to the date of the beginning of said suit, and will be subject to the rulings and decisions thereunder. (Laws of 1907, Chapter 185.)

Section 4871. Appropriation From Adjudicated Stream—Notice. Any person desiring to appropriate water in any stream, creek, canyon, river or ravine, wherein the rights of water therein have been adjudicated and decreed, shall post a

notice in writing in a conspicuous place at the point of the intended diversion, stating therein:

1. The flow claimed, expressed in cubic feet per second.
2. The purpose for which said water is claimed, and the place of intended use.
3. The name of the stream, creek, spring, canyon, river, or ravine.
4. The name of the appropriator or appropriators.
5. The date of posting said notice.

The work in the construction and completion of the means of diverting and conveying water to place of use, shall be prosecuted with reasonable diligence, otherwise no rights shall be acquired by such appropriator, and no appropriator shall acquire any rights to water in excess of the carrying capacity of the ditch or means of conveying water, nor in excess of the amount actually needed by the appropriator for some useful and beneficial purpose. (Laws 1907, Chapter 185.)

Section 4872. Application Filed With Clerk of District Court. Within forty days from the date of the completion of the works of irrigation, the appropriator shall file with the Clerk of the District Court in the County in which said water is to be appropriated, an application in writing to have such ditch measured and the capacity determined, as herein provided.

Such application shall contain the sworn statement of the appropriator, in which is given the name of the stream from which said water is to be appropriated, the amount of water to be diverted, the intended point of diversion, the intended use of such water, and the place of intended use, and the name of the appropriator.

The Clerk of the District Court upon receipt of such application, duly executed and presented by the applicant or his attorney shall enter the same upon the court records of said county, and thereupon issue an order directing a competent civil engineer to proceed to measure and determine the capacity of said ditch (expressed in flow of cubic feet per second) definitely locate the exact point of the diversion by a course and distance to some established corner of the public surveys, or if there be no such corner within two miles of said ditch, then a connecting line shall be run to some suitable permanent object or monument that will not be destroyed or defaced, and to report the results

of such measurements and surveys, together with a plat, in duplicate, on which shall be shown the location of said point of diversion, together with the connecting line, to the corner of the public surveys or monuments, the size and capacity of the ditch and headgate, the date of the notice of appropriation, the date of the survey, the name of the stream, the name of the appropriator or appropriators, the purpose and place of intended use, and in case the use be for irrigation, the plat must show the location and area of land to be irrigated thereby, and make such returns to the Clerk of the Court within thirty (30) days from the receipt of said order.

The Clerk shall thereupon cause to be published, in the newspaper published nearest the point of diversion once a week in three successive issues of said paper, a notice giving the name of the appropriator, amount of appropriation, and name of stream from which the water is appropriated. Any person or persons interested in the waters of said stream may, on or before the last day of publication, file with the clerk, written objections to such appropriation. (Laws of 1907, Chapter 185.)

Section 4873. Duties of Court. The Clerk of the District Court, immediately after the expiration of the period of publication, the receipt of the report and plat of the surveyor, and proof of publication of notice, shall file the same, and on the first day of a regular or special term of court thereafter, shall present all papers to the court for consideration. If no objections are filed, the court shall enter an order allowing said appropriation. If objections are made, the court shall fix a day for hearing, and on such hearing witnesses may testify, and the court after hearing may make any order deemed proper in the premises. (Laws of 1907, Chapter 185.)

Section 4874. Deposit for Expenses. The appropriator shall, at the time of filing his application with the Clerk of the District Court, make a deposit with said clerk, in a sum sufficient to cover all expense for the legal fees for filing any action, together with stenographer's fees, and fees for filing and recording all decrees and other papers in the matter, and the cost of the survey, not to exceed ten dollars per day, and necessary traveling expenses, and five dollars for each plat filed, said sum to be fixed and estimate made by the Clerk of the District Court, and residue remaining in the possession of said clerk, when all fees and

costs are paid shall be returned to the applicant; should there not be sufficient money deposited to meet all fees and expenses said water right shall be of no force and effect, until the same have been paid. (Laws of 1907, Chapter 185.)

Section 4875. Payment of Expenses. The Clerk of the District Court, shall upon receipt of any report made in conformity with the provisions of this Act, and duly certified to by a civil engineer, pay to him out of the moneys deposited with him for said purpose, a sum not to exceed ten dollars per day and necessary traveling expenses, and five dollars for each plat made and filed, upon the civil engineer presenting the proper bill, duly sworn to, for said expenses. A receipt of any such payment shall be given to the Clerk. (Laws of 1907, Chapter 185.)

Section 4876. Record of Survey. The Clerk of the District Court shall keep in his office a suitable bound book, in which shall be kept an accurate record of all surveys and reports made in accordance with this Act. (Laws of 1907, Chapter 185.)

Section 4877. Statutory Measurements. Where water rights have been decreed in statutory or miners' inch measurement, the measurement shall be in cubic feet per second, and one hundred miners' or statutory inches shall be equivalent to a flow of two and one half cubic feet per second, and this proportion shall be observed in determining the equivalent flow of any number of miners' or statutory inches. (Laws of 1907, Chapter 185.)

Section 4878. Penalty. A failure to comply with the provisions of this Act deprives the appropriator of the right to such decree, as against a subsequent claimant who complies herewith. (Laws of 1907, Chapter 185.)

Section 4879. Effect of Decree. Any person or persons appropriating water under the provisions of this Act, shall be subject to, bound by, and shall comply with any decree of court adjudicating the waters of such stream, or any stream of which the same may be a tributary or feeder, as fully and to the same extent as if said person or persons were original parties to the action wherein the said decree is made and entered, and any water commissioner or commissioners, appointed by the court to distribute waters under any decree shall have jurisdiction over, and shall distribute any waters appropriated under the provisions of this Act, according to priority. (Laws of 1907, Chapter 185.)

Section 4880. **Effect of Failure to Comply With Provisions.** A failure to comply with the provisions of this Act, deprives the appropriator of the right to use any water of such stream, as against any subsequent appropriator complying herewith, and as against any prior appropriator mentioned in or bound by a decree of court. (Laws of 1907, Chapter 185.)

Section 4884. **Appointment of Water Commissioner.** Whenever the water rights pertaining to any stream or water system within the State of Montana have been determined by a decree of a competent court it shall be the duty of the District Judge of the district within which such water rights are situated, upon the application of the owners of at least twenty-five per cent of the water rights affected by such decree, to appoint a commissioner, who shall have the authority to measure and distribute to the parties interested under such decree the waters to which they are entitled, according to their priority as established by such decree; provided, however, that upon the application of the owners of at least fifty-one percent of the water rights in any ditch or single water system affected by such decree, a commissioner shall be appointed who shall have authority to measure and distribute to the parties interested under such decree, the waters to which they are entitled, as heretofore provided, and in addition shall have the authority to keep in reasonable repair and maintain such water ditch or water system at the expense of the owners thereof; and for each of the purposes above set forth such commissioner or commissioners shall have authority to enter upon any ditch, canal, aqueduct or other source for conveying the waters affected by such decree, and to visit, inspect and adjust all head gates, or other means of distribution of such waters, and shall have the same power as a sheriff or constable to arrest any or all persons interfering with the distribution made by him, and to take such person so arrested before the Judge of the District Court for trial for contempt of the decree of said court. (Laws of 1905, Chapter 64.)

Section 4887. **Objections to Commissioner's Award.** Any person owning any of the waters of such stream, who is dissatisfied with the method of distribution of the waters of such stream by such water commissioner, and who claims to be entitled to more water than he is receiving, or is entitled to a prior right than that allowed to him by such commissioner,

may file his written complaint, duly verified, setting forth the facts of such claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that notice be given to the parties interested in such hearing, the judge may deem necessary. At the time fixed for such hearing, the judge of said District Court must hear and examine the complainant and such other parties as may appear to support or resist such claim, and also examine such water commissioner and witnesses as to the charges contained in said complaint. Upon the determination of such hearing, the judge shall make such findings, and order as said judge may deem just and proper in the premises. If it shall appear to such judge that the water commissioner has not properly distributed the water according to the provisions of such decree, then the judge shall give the proper instructions for such distribution. The judge may remove such water commissioner and appoint some other person in his stead, if he deems that the interests of the parties in the waters mentioned in such decree will be best subserved thereby, and if it shall appear to such judge that the said water commissioner has wilfully failed to perform his duties, he may adjudge on said hearing said water commissioner guilty of a contempt of the court and punish him as for contempt. The judge shall make such order as to the payment of costs of such hearing as may appear to him to be just and proper. (Laws of 1905, Chapter 64.)

Section 4888. **Record of Commissioner—Expenditures.** Such water commissioner must keep a daily record of the amount of water distributed to each water user and must file a summary of such record with the clerk of the court at the close of his term of service, showing in detail the total amount of water distributed to each water user during such season. Thereupon the judge shall make an order apportioning the total amount of the fees and compensation allowed to such commissioner, and charge the same proportionately to the persons using water during each season, according to the number of inches of water used by such persons; and said water commissioner shall also file a statement of the amount necessarily incurred and expended by him in the repair of any water ditches, and making of any head gates or dams necessary for the distribution of such waters, and which said expense shall be assessed against and paid by the party or parties for whom such services in the repair of such ditch or

ditches, and the making of any dams or head gates were necessary. And the judge shall in the order fixing the amount to be paid by each water user also fix the amount to be paid for the services and expenses last herein mentioned. Upon the filing of such report by the water commissioner, the clerk of the court, as above provided for, shall notify each person mentioned in such report, by mail, that objections to such report may be made by any persons objecting thereto within thirty days after the filing of such report, and unless such objections are filed, the report will be approved by the judge of the court. At any time during said thirty days, any person objecting to such report may make a motion to retax such costs, and the judge may hear and determine such motion and make such orders in reference thereto as in the re-taxation of costs in other cases. (Laws of 1905, Chapter 64.)

Section 4889. **Fees and Compensation.** At the time of the appointment of such water commissioner, his fees and compensation must be fixed by an order of the judge of such court, and the judge may also allow as a charge, any expenses necessarily incurred by said water commissioner in the discharge of his duties, in the employment of extra labor for the repair of dams, head gates, ditches or flumes, when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream, or when the judge has, in his order appointing such commissioner, required such commissioner to repair ditches and keep in repair the necessary head gates, ditches or flumes. The costs thereof, however, shall be taxed against the party or parties for whose benefit the same were incurred. (Laws of 1905, Chapter 64.)

Section 4890. **Users Must Maintain Head Gates, Etc.** All persons using water under a decree from any stream whereon a water commissioner is appointed, shall be required to have suitable head gates at the point wherein a ditch taps a stream, and shall also, at some suitable place on the ditch and as near the head thereof as practicable, place and maintain a proper measuring box, weir or other appliance for the measurement of the waters flowing in such ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such water commissioner not to apportion or

distribute any water through said ditch. (Laws of 1905, Chapter 64.)

Chapter 4.
Mining Partnerships.
(Revised Codes.)

Section 5535. Definition.

5536. Express Agreement not Necessary.

5537. Profits and Losses, How Shared.

5538. Liens of Partners.

5539. Mine—Partnership Property.

5540. Partnership not Dissolved by Sale of Interest.

5541. Purchaser Takes Subject to Liens.

5542. Takes With Notice of Lien, When.

5543. How Partnership Bound.

5544. Owners of Majority of Shares Govern.

Section 5535. Definition. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same.

Section 5536. Express Agreement Not Necessary. An express agreement to become partners or to share the profits and losses of mining, is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

Section 5537. Profits and Losses, How Shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

Section 5538. Liens of Partners. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

Section 5539. Mine is Partnership Property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

Section 5540. Partnership Not Dissolved by Sale of Interest.

One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

Section 5541. Purchaser Takes Subject to Liens. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

Section 5542. Purchaser Takes With Notice of Lien, When. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other, and to the creditors of the partnership.

Section 5543. How Partnership Bound. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

Section 5544. Majority of Shares Governs. The decision of the members owning a majority of the shares or interests in a mining partnership binds it in the conduct of its business.

Miners', Assayers', and Mining Engineers', Exemption From Execution.

(Revised Codes.)

Section 6825. In addition to the property mentioned in the preceding section, there shall be exempt to all judgment debtors who are married, or who are heads of families the following property: * * * To a miner: His cabin or dwelling, sluices and thousand dollars, and one horse or mule with harness, and food for such horse or mule, for three months when such horse or mule is used in working his mine or mining claim.

To a * * mining * * engineer: Instruments, tools, books and records necessary to carry on his profession.

To an * * * assayer: The tools, instruments and supplies necessary to carry on his profession.

Liens of Mechanics on Mining Property.

(Revised Codes.)

Section 7290. Every mechanic, miner, machinist, architect, foreman, engineer, builder, lumberman, artisan, workman, laborer, and any person performing any work and labor upon, or furnishing any material, machinery or fixture for any building, structure, bridge, flume, canal, ditch, aqueduct, mining claim, quartz lode, tunnel, city or town lot, farm, ranch, fence, railroad, telegraph, telephone, electric light, gas or water works or plant, or any improvements upon complying with the provisions of this Chapter, for his work or labor done, or material, machinery or fixtures furnished, has a lien upon the property upon which the work or labor is done, or material furnished.

Fixtures Attached to Mine.

(Revised Codes.)

Section 4428. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

Fraud in Selling Mines, Etc.

(Revised Codes.)

Section 8692. Use of False Pretenses in Selling Mines.

8693. Interference With Samples for Assay.

8694. Making False Samples of Ore.

Section 8692. **False Pretensions in Selling Mines.** Every person who, with intent to cheat, wrong, or defraud, places in or upon any mine or mining claim any ores or specimens of ores not extracted therefrom, or exhibits any ore, or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim, or interest therein, or who obtains any money or property by any such false pretenses or artifices, is guilty of a felony.

Section 8693. **Interference With Samples for Assay.** Every person who interferes with, or in any manner changes samples of ores or bullion producing for sampling, or changes or alters samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong, or defraud, is guilty of a felony.

Section 8694. **Making False Samples of Ore.** Every person who, with intent to cheat, wrong, or defraud, makes or publishes a false sample of ore or bullion, or who makes or publishes, or causes to be published a false assay of ore or bullion is guilty of a felony.

Destroying Notices—Penalty.

(Revised Codes.)

Section 8759. Every person who intentionally:

1. Defaces, obliterates, tears down or destroys any copy or transcript or extract from or of any law of the United States or of this State, or any proclamation, advertisement or notification set up at any place in this State by authority of any law of the United States or of this State or by order of any court, before the expiration of the time for which the same was to remain set up; or,

2. Defaces, obliterates, tears or destroys any notice placed or posted on a mining claim, or removes or destroys any stake or monument placed thereon to identify it.

Is punishable by imprisonment in the county jail not exceeding three months or by a fine not exceeding one hundred dollars, or both.

**Opinion of Attorney General Relative to Duties of Mine
Inspectors in Cases of Fatal Accidents.**

Helena, Mont., Dec. 1st, 1906.

Mr. J. B. McDermott, Coal Mine Inspector, Mr. William Walsh,
Mine Inspector, Helena, Mont.

Gentlemen:

Your joint letter of recent date received, in which you request an opinion of this office as to the duties in regard to cases where fatal accidents occur in any of the mines under your respective jurisdictions, and also as to the duties and procedure of coroners and acting coroners in such cases.

Section 586 of the Political Code, as amended by the laws of 1903, page 181, (Revised Codes, Section 1717), in defining the duties of the mine inspector, says:

"Whenever a serious or fatal accident occurs in any mine it is the duty of the person in charge thereof to immediately notify the Inspector of Mines or the Deputy Inspector, and upon receiving such notice the inspector in person or the deputy inspector must at once repair to the place of accident and investigate fully the cause of such accident, and whenever possible to do so the inspector or deputy inspector shall be present at the coroner's inquest held over the remains of the person or persons killed by such accident, and testify as to the cause thereof, and state whether, in his opinion, the accident was due to the negligence or mismanagement of the owner or person in charge."

Section 4 of Senate Bill 106, Laws of 1901, page 64, in defining the duties of the Coal Mine Inspector, says:

"And it shall further be the duty of the said Coal Mine Inspector after being notified by a justice of the peace, or coroner, in the district where accidents may occur to immediately investigate the same."

From the language of the above laws it is apparent that the legislature intended that said mine inspectors would make personal investigation into the causes of death in mines coming under their jurisdiction, and give to the coroner and coroner's jury the benefit of their opinions as experts upon the facts found by their investigation.

Said section 586 as amended says:

"When possible to do so, the inspector or deputy inspector shall be present at the coroner's inquest held over the remains

of the person or persons killed by such accident and testify as to the cause thereof."

If the location of the mine is so remote from the office of the inspectors, or the place where the proper inspector may be then engaged as to make it impossible for him to go to the mine and make his investigation before the body of deceased should be interred, then and in that event, the coroner or acting coroner should impanel the jury and after they have inspected the body or bodies, he should not conclude the taking of the testimony and submit the case to the jury until such time as the proper mine inspector had received reasonable notice and had opportunity to make his investigation and testify before the jury.

The coroner or acting coroner has the right after having had the jury inspect the body or bodies, or at any stage of the proceedings thereafter, to adjourn the inquest to some future date so as to give the mine inspector time to go to the place of the accident, make his investigation and then appear before the jury and give his testimony.

In our opinion this procedure should be followed by coroners and acting coroners in all inquests held by them over the remains of persons killed in mines coming under the jurisdiction of such mine inspector.

Very truly yours,

ALBERT J. GALEN,

Attorney General.

INDEX

ACCIDENTS —Investigation by Inspector	pages 5, 75, sec. 1717
ASSAYS —False Reports	page 74, sec. 8694
Interference with Samples	page 73, sec. 8693
BOARD OF EXAMINERS, Candidates for Inspector of Coal Mines—	
Application for Examination	page 20, sec. 3
Appointment of Board	pages 19, 22, secs. 1, 10
Appointment for Inspector, who ineligible	page 20, sec. 4
Candidates, appointment	page 22, sec. 9
Compensation and Expenses of Board	page 21, sec. 8
Certificate of Fitness	page 21, sec. 7
Examination, scope	page 19, sec. 2
May adopt Rules	page 22, sec. 12
Meetings, oath of office	page 20, sec. 6
Vacancies, how filled	page 22, sec. 13
CAGES —See Safety Cages.	
CHECKWEIGHMAN at Coal Mines	page 30, sec. 1709
CHILD LABOR —Age Certificate	page 41, sec. 1749
Employment prohibited	pages 40, 42, secs. 1746, 1752
Liability of parent	page 41, sec. 1747
Penalty	pages 42, 43, secs. 1751, 1754
Record of children under sixteen	page 41, sec. 1748
COAL MINERS' INSURANCE—	
Acceptance of benefit, release of employer	page 37, sec. 11
Act takes effect, when	page 38, sec. 13
Agents of companies to report to commissioner of insurance	page 34, sec. 3
Annual report of commissioner	page 36, sec. 10
Benefits exempted, non-assignable	page 37, sec. 11
Claimant refusing to submit to examination, effect	page 36, sec. 8
Commissioner to issue warrant to heirs of deceased.....	page 34, sec. 5
To receive funds and pay to treasurer	page 34, sec. 4
Contract waiving provisions of Act, unlawful	page 34, sec. 3
Fines, payable to treasurer to credit of fund	page 34, sec. 12
Foreign heirs	page 34, sec. 5
Fraudulent claims, duty of commissioner	page 36, sec. 7
How fund raised, paid to commissioner	page 33, sec. 2
Investment of fund, interest	page 34, sec. 4
Liability of sureties of treasurer	page 34, sec. 4
Monthly payments, applications, certificate of physician	page 36, sec. 7
Redemption by lump sum	page 36, sec. 9
Payment of death claims, to whom	page 34, sec. 5
Permanent injuries, compensation	page 34, sec. 5
Powers of commissioner, disputes, settlement	page 36, sec. 10
Suit, forfeiture of benefits	page 37, sec. 11
To whom Act applies	page 33, sec. 1
Violation of Act, penalties	page 37, sec. 12
Warrants to draw interest	page 36, sec. 5
COAL —Weight of	page 31, sec. 2023
COAL MINING —Regulation of	pages 23-31, secs. 1692-1710
Cages, how loaded	pages 28, 29, secs. 1704, 1705

Checkweighman	page 30, sec. 1709
Depositing slack in streams	page 32, secs. 8557, 8558
Escapes	pages 24, 25, secs. 1695, 1696
Explosive gases	page 26, sec. 1699
False weights	page 31, sec. 1710
Foremen, incompetency	page 27, sec. 1701
Hoisting from and lowering into mines.....	page 28, sec. 1703
Inspector, see Inspector of Coal Mines.	
Maps	pages 23, 24, secs. 1692, 1693
Penalties	pages 29, 33, secs. 1706, 8559
Signals	page 28, sec. 1704
Unlawful working of mines	page 26, sec. 1700
Ventilation	page 25, secs. 1697, 1698
Ventilation furnaces, construction	page 27, sec. 1702
Washhouses for employees	page 30, sec. 1708
CODE OF SIGNALS	pages 7, 8, sec. 1712
COMPANY STORES —Payment in script prohibited	page 45, sec. 1744
Violation of Act, penalty	page 46, sec. 745
DEPUTY INSPECTOR OF MINES —Appointment	page 3, sec. 1712
Duties, salary	page 3, sec. 1712
EIGHT HOUR LAW —Hoisting engineers	page 38, sec. 1734
Miners	page 39, secs. 1736, 1739
Smeltermen	page 39, secs. 1737, 1739
Penalties	page 39, secs. 1735, 1738
EXEMPTIONS FROM EXECUTIONS —Miners, etc.	page 72, sec. 6825
EXPLOSIVES —Regulation of sale	page 12, sec. 8545
Storage in cities	page 12, sec. 8547
Storage in mines	page 12, sec. 8546
Penalties	page 13, secs. 8552, 8553
EXTORTION BY FOREMAN	page 44, sec. 8678
FELLOW SERVANT LAW	page 43, secs. 5246, 5248
FIXTURES TO MINES	page 73, sec. 4428
FOREMEN —Extortion by	page 44, sec. 8678
Witnesses immune	page 44, sec. 8679
INSPECTOR OF COAL MINES —	
Application for appointment	page 20, sec. 3
Appointment, examination	pages 19–22, secs. 1–16
Examination, see Board of Examiners.	
Ex-officio sealer of weights	page 17, sec. 1687
Instruments to be furnished to	pages 16, 17, secs. 1684, 1688
Neglect of duty	page 18, sec. 1690
Not to be employed by companies	page 15, sec. 1683
Powers and duties	page 15, sec. 1682
Qualifications	page 14, sec. 1680
Reappointment not prohibited	page 22, sec. 11
Refusal of mine owner to furnish facilities	page 17, sec. 1689
Salary	page 15, sec. 1681
Temporary vacancy, how filled	page 16, sec. 1686
To post statement of condition of mine	page 16, sec. 1685
Vacancy, how filled	page 20, sec. 5
Violation of duty, penalty	page 18, sec. 1691
Who ineligible	page 20, sec. 4
INSPECTOR OF QUARTZ MINES —	
Accidents, duties	pages 5, 75, sec. 1717
Annual inspection	page 5, sec. 1716
Annual report	page 6, sec. 1719
Appointment	page 3, sec. 1711
Bond	page 6, sec. 1718

Duties	pages 4, 5, secs. 1713-1717
Preparation of code of signals	page 7, sec. 1724
Salary	page 3, sec. 1711
What mines to be inspected	page 6, sec. 1720
MECHANICS' LIENS —On mining property	page 73, sec. 7290
MINERS —Protection to	pages 9-13, secs. 8536-8543
Escapement shaft	page 11, sec. 8541
Maintaining building near mouth of shaft	page 10, sec. 8539
Running cage at excessive speed	page 10, sec. 8538
Safety cages	page 9, sec. 8536
Stopping near shaft prohibited	page 10, sec. 8537
To what mines Act applicable	page 11, sec. 8542
Violation of Act, penalties	page 10, sec. 8540
MINES —Fraud in selling	page 73, sec. 8692
MINING CLAIMS —Amended declaratory statement	page 51, sec. 2296
Amended locations	pages 49, 51, secs. 2288, 2295
Defective location, good as against third person.....	page 50, sec. 2293
Discovery, requirements	page 46, sec. 2283
Effect of patent	page 51, sec. 2294
Location notice, record	page 48, sec. 2284
Mill sites	page 49, sec. 2285
Official survey, certificate	page 52, sec. 3616
State lands, see State Mineral Lands.	
Relocation	page 49, sec. 2286
Relocation by owner	page 50, sec. 2289
Relocation, not waiver of rights	page 50, sec. 2290
Representation work	page 52, sec. 3614
Rights of relocater	page 49, sec. 2287
MINING PARTNERSHIPS —Definition	page 71, sec. 5535
Express agreement not necessary	page 71, sec. 5536
How bound	page 72, sec. 5543
Liens of partners	page 71, sec. 5538
Majority of shares govern	page 72, sec. 5544
Mine, partnership property	page 71, sec. 5539
Profits and losses, how shared	page 71, sec. 5537
Purchaser takes subject to liens	page 72, secs. 5541, 5542
Sale of interest, effect	page 71, sec. 5540
NOTICES —Destroying prohibited	page 74, sec. 8759
PERSONAL INJURIES	pages 43, 44, secs. 5246-5250
SAFETY CAGES —How constructed.....	page 9, sec. 8536
STATE MINERAL LANDS —Coal lands, what deemed	page 53, sec. 28
Location of mining claims	page 54, sec. 71
Proof of mineral character	page 53, sec. 72
Rental of coal lands	page 54, sec. 70
Sale, reservation of coal, etc.	page 54, sec. 34
Valuable for stone	page 55, sec. 73
WATER COMMISSIONERS —Appointment	page 68, sec. 4884
Duty of water users	page 70, sec. 4890
Fees and compensation	page 70, sec. 4889
Objection to award	page 68, sec. 4887
Record, expenditures	page 69, sec. 4888
WATER RIGHTS —Appropriations	page 57, secs. 4840, 4841
Appropriation, failure to comply with law.....	page 58, sec. 4849
Appropriation from adjudicated streams.....	pages 64-68, secs. 4871-4880
Appropriation subject to prior decrees	page 64, secs. 4868-4870
Dams, construction	page 62, secs. 4864, 4865
Dams, right to construct	page 60, sec. 4857
Declaration notice, record	page 59, sec. 4853

Diligence in appropriating	page 58, sec. 4848
Effect of decree	page 83, sec. 4867
First in time, first in right	page 58, sec. 4845
Highways to be protected	page 61, secs. 4858, 4859
Measurement of water	page 60, sec. 4854
Miners' inch	page 60, sec. 4855
Notice of appropriation	page 58, sec. 4847
Owners may sell surplus	page 61, sec. 4860
Point of diversion may be changed	page 57, sec. 4842
Recapture of water	page 57, sec. 4843
Record of declaration	page 59, sec. 4950
Record, prima facie evidence	page 59, sec. 4851
Rights settled in one action	page 59, sec. 4852
Surplus, enforcement of right to	page 62, sec. 4862
Purchaser cannot sell	page 62, sec. 4863
Purchaser to dig ditches	page 61, sec. 4861
To be returned to stream	page 57, sec. 4844
Survey of ditches	page 62, sec. 4866

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